(m) * * *

(1) * * *

(i) The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals at or above the action level and/or excursion limit for 30 or more days per year, or who are required by this section to wear negative pressure respirators.

* * * * *

(n) * * *

(1) * * *

(i) Where the employer has relied on objective data that demonstrates that products made from or containing asbestos, tremolite, anthophyllite, or actinolite are not capable of releasing fibers or asbestos, tremolite, anthophyllite, or actinolite or a combination of these minerals, in concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

* * * * *

(o) * * *

(1) * * * The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective October 14, 1988.

(2) Start-up dates. The requirements of paragraphs (c) through (n) of this section, including the engineering controls specified in paragraph (g)(1) of this section, shall be complied with by January 16, 1987. Compliance with the excursion limit requirements in this section shall be as follows:

(i) Paragraphs (c), (d), (e), (f), (h), (i), (k), (l), (m), (n) of this section, shall be complied with by December 13, 1988.

(ii) Paragraph (g) of this section, shall be complied with by March 13, 1989.

(iii) Paragraph (j) of this section shall be complied with by September 14, 1989.

* * * * *

[FR Doc. 88-20556 Filed 9-13-88; 8:45 am]

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federal register

Wednesday
September 14, 1988

Part IV

Department of the Interior

Minerals Management Service

Proposed 1991 Lease Sale in the Beaufort Sea; Lease Sale 124; Call for Information and Nominations and Intent To Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1991 Lease Sale in the
Beaufort Sea
Lease Sale 124
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for Outer Continental Shelf (OCS) Lease Sale 124. This sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for February 1991. Information and nominations on oil and gas leasing, exploration, and development and production within the Beaufort Sea are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The area of Call is located offshore the State of Alaska in the Beaufort Sea and the Arctic Ocean. The area available for nominations and comments consists of approximately 9,500 whole and partial blocks (about 52 million acres) as outlined on the map which appears at the end of this Call. The map includes an outline of the Minerals Management Service's (MMS's) interpretation of the area of hydrocarbon potential. Respondents may nominate and are asked to comment on any acreage within the entire Call area. A larger scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for $2.00 each.

The highlighted area shown on the map at the end of this Call and on the Call map was requested to be deferred by the State of Alaska during preparation of the 5-Year OCS Oil and Gas Leasing Program for Mid-1987 Through Mid-1992. The deferral was not adopted in the 5-year program; however, the area has been highlighted for special presale consideration and analysis as a potential deferral alternative in the Environmental Impact Statement (EIS) scoping process. Keeping this area under consideration for leasing will permit MMS to further study it in the process of analysis and consultation. The acreage finally offered for sale will be determined only after extensive consultation with Federal Agencies, State and local governments, and the potentially affected public, and after careful review of environmental analyses conducted in those areas which may lead to discovery of new oil and gas reserves. This is consistent with the commitment made by DOI in the July 1987 5-Year OCS Oil and Gas Leasing Program.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in OCS Lease Sale 124. Nominations must be depicted on the larger scale Call map by outlining the area(s) of interest along block lines. Respondents may also submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also asked to rank areas nominated according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority, because blanket priorities on large areas are not useful in the analysis of industry interest.

The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments also are sought on potential conflicts that may result from the proposed sale and future OCS oil and gas activities with approved local coastal management plans (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of either broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Beaufort Sea Lease Sale 124," or "Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 124," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area. Copies of the Call map showing indications of interest and any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior,

Minerals Management Service, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to focus the analysis in the remainder of the sale process on areas of hydrocarbon potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the EIS and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS, including a description of the scoping process, is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to evaluate potential conflicts between the Coastal Management Program and offshore oil and gas activities.

Existing Information

An extensive environmental as well as socioeconomic studies program has been underway in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Description of Area or by telephone at (907) 261-4620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, or by calling (703) 285-2283.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.), and the OCS Lands Act, as amended, and with established departmental procedures.

Tentative milestones that will precede this sale, proposed for February 1991, are:

Milestones	Dates
Comments Due on the Call	October 1988
Scoping Comments Due	October 1988
Area Identification	December 1988
Draft EIS Published	January 1990
Hearings on Draft EIS Held	February 1990
Final EIS Published	August 1990
Availability of Proposed Notice of Sale Published	September 1990
Governor's Comments Due on Proposed Notice	November 1990
Final Notice of Sale Published	January 1991
Sale	February 1991

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 124 in the Beaufort Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to

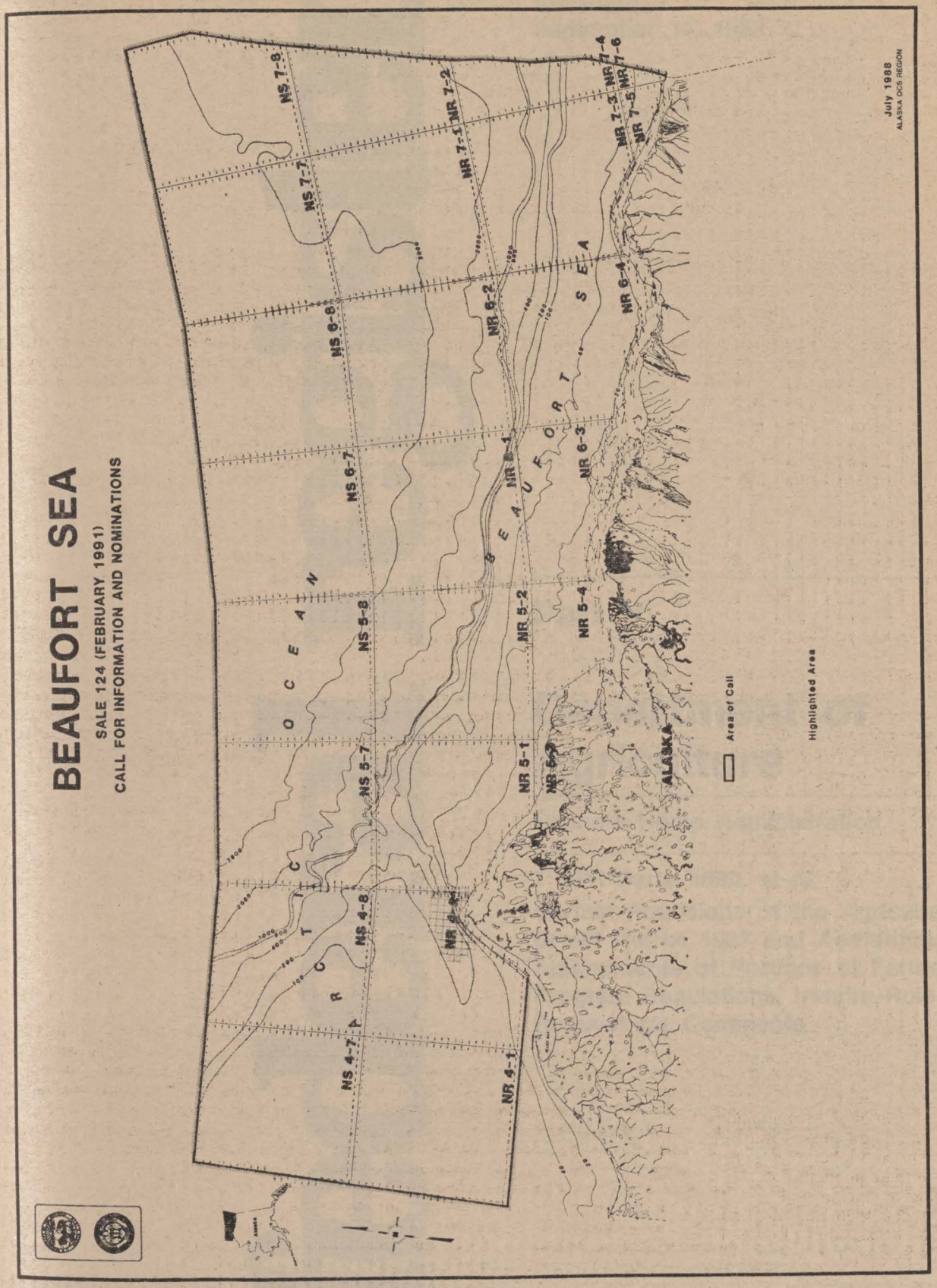
the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Beaufort Sea Lease Sale 124." Comments are due no later than 45 days from publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Acting Director, Minerals Management Service
Thomas Gernhofer

Approved:

Assistant Secretary - Land and Minerals Management
Steven Griles

SEP 7 1988
Date



[FR Doc. 88-20871 Filed 9-13-88; 8:45 am]

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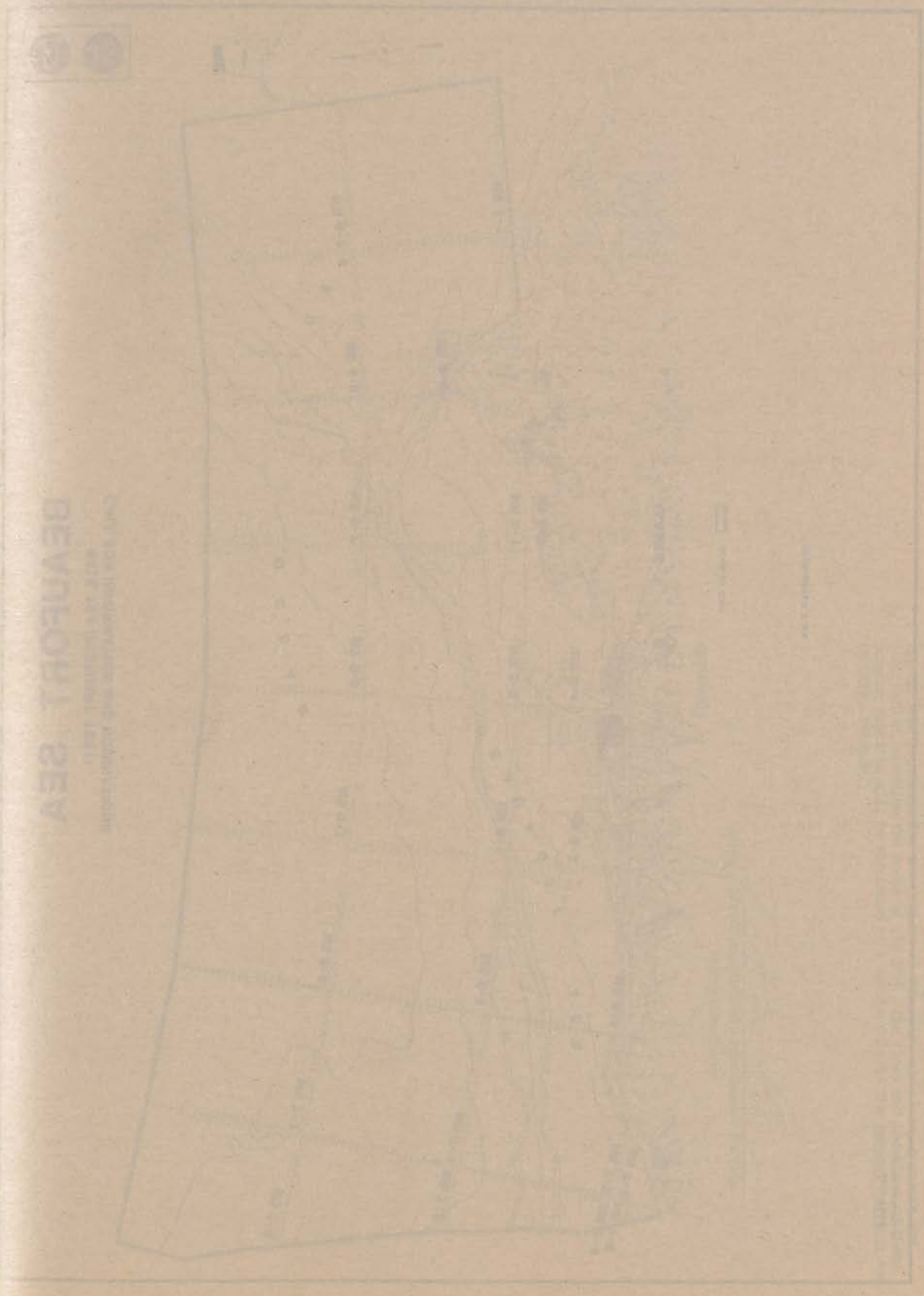

federal register

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Part V

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1809, et al.

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations; Interim Rule with Request for Comments

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1902, 1910, 1924, 1941, 1943, 1944, 1945, 1951, 1955, 1962, 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) published a proposed rule on May 23, 1988 in the **Federal Register** [53 FR 18392–18523] for comments. After consideration of the comments FmHA amends its regulations to conform to the following provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233): Section 503—Participation of Federal Agencies; Section 512—Waiver of Mediation Rights by FmHA Borrowers; Section 602—Definitions; Section 603—Security for FmHA Real Estate Loans; Section 604—Additional Collateral; Section 605—Notice of Loan Service Programs; Section 606—Planting and Production History Guidelines; Section 610—Disposition and Leasing of Farmland; Section 611—Income Release; Section 612—Conservation Easements; Section 614—Homestead Protection; Section 615—Debt Restructuring and Loan Servicing; Section 616—Transfer of Inventory Lands; Section 617—Target Participation Rates; Section 618—Expedited Clearing of Title to Inventory Property; Section 620—Lease of Certain Acquired Property; and Section 623—Farm Ownership Outreach Program to Socially Disadvantaged Individuals. This interim final also includes the following amendments: (1) Provide for Farm Ownership loans and leasehold interests in Hawaii; (2) remove obsolete and unfunded recreation loan program regulations; (3) add more guidance on what is a nonfarm enterprise; (4) require financial information from all members of an entity and delete the reference to principal members; (5) protect historic sites and correct health or safety problems; (6) clarify the use of the word character; (7) require that balloon payments be adequately secured by hard security other than just a crop lien; (8) remove the regulations for the restrictions on using operating loan funds for the production of surplus agricultural commodities; (9) define a feasible Farm and Home Plan and provide guidance for determining family living expenses; (10) require each State to issue annually unit prices for Farm commodities; (11) consider a husband and wife as a joint operation when they both sign the application; and, (12) make other necessary clarifications and editorial changes. This action is being taken to: implement certain provisions of the Agricultural Credit Act of 1987, strengthen, clarify and correct noted weaknesses in existing regulations; and remove regulations for obsolete and unfunded loan programs. The intended effect is to: (1) Facilitate keeping borrowers on the Farm or ranch to the maximum extent possible; (2) respond to rural Farm problems throughout the Nation; (3) to minimize losses under farmer program loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded Farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; and, (6) provide more guidance to the FmHA field staff.

DATES: Interim rule effective October 14, 1988. Comments must be submitted on or before November 14, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. The Interim Regulatory Impact Analysis Statement [IRIA] and all written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Program, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447–4671.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as interim final rules to implement titles 5 and 6 of the Agricultural Credit Act of 1987, Pub. L. 100–233, 101 Stat. 1662 et seq. I find that these regulations comply with that statute and that FmHA has the authority to propose such regulations pursuant to that Act and to section 399 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Christopher Hicks,

General Counsel.

Summary of IRIA

The USDA has developed a Preliminary Regulatory Impact Analysis (PRIA) due to the effect the Agricultural Credit Act of 1987 will have on the economy. There are a number of requirements in the Act, however the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document. The PRIA for this document was summarized in the proposed rule published on May 23, 1988 [53 FR 18392].

The analysis showed that of about 118,000 borrowers delinquent in early 1988, about 37,000 borrowers were considered able to resolve delinquency through normal servicing actions, including subordination, rescheduling and deferral.

Of the remaining 81,000 borrowers eligible for consideration of restructuring with write-down of debt, about 16,000 were estimated to be able to show repayment on remaining debt and qualify for the write-down. An estimated 54,000 were estimated to be unable to show repayment ability and would be rejected for write-down. The remaining 11,000 delinquent borrowers were estimated ineligible for write-downs since their debt was less than the recovery value from liquidation.

The study estimated losses for FmHA to total $2.7 billion for borrowers able to cashflow and qualify for the write-down and $6.7 billion for borrowers unable to show repayment ability and rejected for restructuring with write-down. These losses could be reduced by an estimated $1 billion through recapture provisions.

FmHA has already incurred significant loan losses due to deterioration in collateral and lien position that have already been incurred. Losses due to liquidation costs will be included in the write-down for borrowers who qualify for restructuring or add to loan losses on foreclosures. The study concluded that to a large extent the estimated losses associated with debt restructuring are unavoidable.

These estimates are subject to a wide range of variables affecting the number of delinquent borrowers who qualify for write-down and the extent of the write-down. For example, liquidation costs included in the write-down will vary with the average time property is held in inventory. For states with slow-moving

inventory the estimated liquidation costs, and the amount of write-down, will be greater than states with short turn around for inventory property. The extent of the drought will also impact the number of delinquent borrowers, future prices, and repayment prospects.

Despite these uncertainties, the estimates contained in the Preliminary Impact Analysis are considered to be substantially indicative of the number of borrowers qualifying for the write-down and associated costs of debt restructuring under the preliminary regulations are revised for interim final publication. Changes in the interim final regulations are likely to affect servicing and property management procedures more than the extent of debt adjustment under the restructuring provisions. For example, the interim final regulations have been revised to facilitate assistance to borrowers rejected for restructuring. Greater use of lease-back and buy-back provisions are expected through simultaneous credit sales of both real estate and chattel. These and other impacts are considered in an addendum to the revised impact analysis.

Since these provisions are required by the Act, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our Farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances. They are as follows:

1. Section 607—County Committees

Allows one member of the County Committee to be an FmHA Farmer Program borrower and removes the requirement that a member must derive the principal part of income from farming.

This was implemented March 24, 1988.

2. Section 608—Administrative Appeals

Requires FmHA to set up a separate independent nationwide appeals system for all FmHA borrowers. This was implemented July 12, 1988.

3. A Portion of Section 611—Income Release

Provides for the release of up to $18,000 of normal income security for family living and Farm operating expenses to borrowers that have been accelerated but not foreclosed.

The FmHA field offices were notified on February 2, 1988, to implement this provision immediately.

4. Section 613—Interest Rate Reduction Program; Demonstration Project for Purchase of System Land

Provides for an FmHA guarantee of up to 95 percent of the loan if there is an interest rate reduction for the loan for Farm Credit Administration (FCA) inventory property when the Farm Credit Administration District has received financial assistance from the Farm Credit System Assistance Board.

FmHA and FCA signed a Memorandum of Understanding for this on March 3, 1988.

5. Section 619—Payment of Losses on Guaranteed Loans

Provides for FmHA to pay a lender estimated losses either through debt write-down or reorganization through bankruptcy for FmHA guaranteed loans.

6. Section 711—Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration

Provides the pooling of notes for issuing pooling certificates for sale on the secondary market.

Section 803—Sale of Rural Development Notes

Allows the borrower who signed a note the opportunity to purchase the note before the note is offered for sale. This is for community programs. It was implemented on March 14, 1988.

7. Title V—State Mediation Programs

Subtitle A—Matching Grants for State Mediation Programs

Section 501—Qualifications. Establishes the procedures and requirements for FmHA to certify a State for a State mediation program.

Section 502—Matching Grants to States. Establishes the procedures for receiving grants from FmHA for State mediation programs.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA Farm borrowers. The Act requires their implementation. It will allow many Farm borrowers to continue to Farm and will, at the same time, assist in minimizing losses to the Government.

Since most of these sections of the Act are interrelated, they are combined into one separate issuance of regulations. Some of the sections require only minor changes in the regulations while others are major changes. The debt write-down provisions involve major additions to the regulations.

8. These Interim Rules

Proposed rules were published in the **Federal Register** [53 FR 18392] on May 23, 1988, with a 30 day comment period. In view of the short statutory requirement for implementing these sections of Pub. L. 100–233, only a 30 day comment period was allowed. We believe that the short implementation period required by the Act shows that Congress intended for the claimants to benefit from them quickly after considering public comments. Any further delay in implementing these regulations would be thwarting Congressional intent. Therefore, we are publishing them as an interim rule with a further comment period.

Discussion of the Revisions and the Comments Received

In response to the proposed rule, 247 respondents commented in writing by

the close of business on June 24, 1988. The deadline for receiving written comments was June 22, 1988. Many of the respondents' letters contained comments on a number of the sections of the proposed rule. Comments were received from individuals, FmHA employees, interest groups, United States Congressmen, and State government officials. Many of the comments were copies of very similar letters. A number of the respondents indicated that they endorsed or concurred with the 116 pages of comments with attachments from the Farmers Legal Action Group, St. Paul, Minnesota.

Several of the respondents requested that some of the provisions of the regulations be published again as a proposed rule with a comment period. However, since most of the sections of the Act are interrelated, it would be very difficult and time-consuming to separate the regulations to publish part of them as a final rule. Also, many areas of the country are suffering from a severe drought. Many farmers are in immediate need of the benefits of this Act. Several Congressmen have recommended that FmHA publish these regulations as an interim rule with a comment period to expedite the implementation of the Act.

It is our opinion that, due to the drought, many farmers are in urgent need immediately of the benefits of this Act and that after consideration of all the constructive comments received for the proposed rule, the revisions to the proposed rule provide workable regulations that will be of immediate assistance to many farmers and will help in minimizing losses to the Government. Major changes in regulations such as these almost always have to be fine-tuned by additional revisions after they are implemented. Therefore, the proposed rule with revisions is issued as an interim rule with a 60 day comment period.

Comments are discussed as "A. Summary of General Comments," and "B. Specific Comments and Regulation Revisions."

A. Summary of General Comments

A very great number of individuals did not specifically address any particular section of the proposed rule, but made general statements such as:

1. The regulations are unfair to those who have to pay their debts in full at higher interest rates.
2. The regulations are discriminatory.
3. The regulations are a terrible burden and a waste of taxpayer's money.
4. Respondent is going to suspend payments to FmHA until the respondent receives a satisfactory explanation.
5. Keeping these farmers in business adds to the surplus on one hand, while on the other hand, the Government buys up the surplus and supports prices.
6. Credit is too easy. The Government should foreclose.
7. There is no incentive to do a good job.
8. Many FmHA borrowers are poor managers; they spend money they do not have.
9. This is another shove to make a proud, hardworking person into a freeloader.
10. Such regulations dampen and corrupt successful attitudes.
11. This regulation will not help the hardworking farmers who pay their bills.
12. Some people succeed and some fail. Let the good survive and the bad get out.
13. Some Farm the land, some Farm the Government.
14. I am mad as hell and tired, you should write down all farmers debts.
15. I am happy to see that small farmers can have their debts written down to where they can handle it and stay in business.
16. This program will assure there is food on the shelves in the grocery stores. We would have asked the Grange to support this program.
17. Selling the Farm back to the borrower will not solve the problem.

B. Specific Comments and Regulation Revisions

The comments and regulations revisions will be addressed in the order that the regulations appear in the CFR.

PART 1809—APPRAISALS

Subpart A—Appraisal of Farms and Leasehold Interest

Section 1809.1 is amended to correct a reference and to remove Recreation (RL) loans from the paragraph as this program is removed from FmHA regulations. No comments were received on this amendment. The proposed rule is adopted as proposed.

Section 1809.4—The three-way approach to market value. Respondents commented on other regulations that the price of suitable farmland should reflect the annual production value. FmHA uses the capitalization value to determine this. Therefore, we have revised this section to clarify the procedure for this.

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursements

The agency is revising Subpart A of Part 1902 of the regulations to delete the requirement that the original cancelled check must be returned by the bank when countersigned checks are used and keep the regulations in line with evolving technology in the commercial banking industry.

Section 1902.1—General. The amendments to this section provided for the deletion of Exhibits C and D, changing the word "bank" to "financial institutions" and allowing the placement of payments in a supervised bank account when a borrower is in liquidation and State law requires a reversal of the acceleration if payment is accepted. No unfavorable comments were received regarding the deletion of Exhibits C and D and the word change from "bank" to "financial institutions." Thus, the Agency adopts the proposed amendment for these two items. Several comments were received on the placement of payments received in a supervised bank account when an account is in liquidation. The respondents concerns were that interest would continue to accrue upon the account as the payment would not be applied directly to a loan account. The Agency has amended § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter, deleting this requirement and has deleted the reference to § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter.

Section 1902.2—Policies concerning disbursement of funds. The amendments to this section provided for the deletion of Exhibits C and D, the submitting of Forms FmHA 440–57 or 1944–57 to the State Office rather than the Finance Office, change "bank" to "financial institution," and allowing financial institutions using a truncation process to provide FmHA with a microfilm copy or other reasonable facsimile of the original cancelled check when requested by FmHA at no charge either to FmHA or to the borrower, and the original check will not have to be provided to FmHA and/or the borrower with the bank statement. One FmHA respondent commented on the submitting of Forms FmHA 440–57 or 1944–57 to the State Office instead of the Finance Office and the subsequent ordering of checks by the County or District Offices. All field offices now have the capability of ordering subsequent checks by the Automated Data Processing System (ADPS) and the Agency has revised this

section to clarify when the County or District Offices will submit Form FmHA 440–57 or 1944–57 and how to order subsequent checks. The Agency chooses to adopt the proposed rule as amended.

One respondent commented that the regulation did not adequately explain when it was "necessary" to place funds in a supervised bank account. The Agency adopts a change to paragraph (a)(6) of § 1902.2, in which the County Supervisor and the borrower will agree that special supervision is needed in the management of the borrower's financial affairs. This supervisory technique will be temporary in nature and cannot exceed one year unless the District Director agrees to an extension of time. The Agency adopts the proposed amendment.

Section 1902.3—Procedures to follow in fund disbursement. One respondent commented that advances are now requested by the ADPS system. This change was made.

Exhibit B was revised to change "bank" to "financial institutions," and to modernize certain legal expressions. Since no unfavorable comments were received, the Agency adopts the proposed amendment.

Exhibits C and D were deleted and since no unfavorable comments were received, the Agency has deleted these two Exhibits.

The rest of the proposed rule is adopted as proposed. No other comments were received.

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

This subpart provides the procedures for receiving and processing FmHA applications for services. This subpart was revised in part to incorporate section 623, "Farm Ownership Outreach Program to Socially Disadvantaged Individuals" of the Agricultural Credit Act of 1987. This section provides for a farm ownership outreach program for persons who are members of any group with respect to which an individual may be identified as a socially disadvantaged individual to encourage the acquisition of inventory farmland of FmHA. Several comments were received regarding the method of outreach, the targeting of funds and the identification of the socially disadvantaged. These comments are addressed in the appropriate sections of the regulations.

Section 1910.1—General. The Agency proposed to delete reference to recreation (RL) loans and to refer to *insured* section 502 and 504 Rural Housing (RH) for clarification. No negative responses were received. The Agency adopts the proposed amendments.

Several respondents commented that the phrase "other written statements" concerning information the County Supervisor would provide to an applicant/borrower was too vague and that the Agency should clearly state the content of the information provided. The Agency adopts a change which deletes the wording "other written statements" and provides for the distribution of the appropriate FmHA program regulations.

One respondent was concerned that while historic preservation concerns are addressed in various ways by subsequent sections, in § 1910.1 there is no clear and simple methods which will assure historic preservation issues will ever be addressed in the granting of FmHA assistance. The Agency believes its present process as outlined in Subpart G of Part 1940 of this chapter covers the respondent's concerns. The Agency also plans to update the environmental regulations in the near future to conform with the Advisory Council on Historic Preservation recommendations. These changes will be addressed in a separate regulation.

Section 1910.2—Equal Credit Opportunity Act (ECOA) and Regulation B. One respondent commented that additional language should be included that would not deny any applicant assistance or services if the applicant, in good faith, exercised any right under State or Federal law. The Agency believes that it is not necessary to adopt this recommendation, as applicants are already protected if a State or Federal law takes precedence over FmHA's regulations.

Section 1910.3—Receiving applications. Several comments were received regarding the filing of a written application and that applicants will be encouraged to file a written application even though funds may not be currently available. It was reported this is a standard practice in some FmHA field offices to discourage the filing of written applications when funds are not currently available. It was suggested that a statement be placed on Form FmHA 410–1, "Application for FmHA Services," that stated "you should file a written application even if FmHA funds are not available." It was also suggested that FmHA either post notices or provide written notices that an application is required for debt restructuring. The Agency agrees with the comment and has amended this section to stress that all applicants will be encouraged to file a written application, that no oral or written statements will be made to applicants that would discourage them from applying, and that completed applications must be considered in the date order received. The proposed amendment is adopted as changed.

One respondent was concerned that Form FmHA 410–1 was not included in the proposed rule. FmHA normal policy is not to publish forms in the **Federal Register**. Most FmHA forms are readily available in any FmHA office. The statute does not require the publication of forms in the **Federal Register**.

FmHA added a provision that provides for County Office employees to be responsible for receiving loan applications and giving a preliminary explanation of the services available. This will provide for a greater utilization of FmHA's workforce in meeting the needs of applicants. The proposed amendment is adopted.

One provision added to this section was to differentiate between joint applications for Single Family Housing loans and for Farmer Program loans, and that husbands and wives who jointly request a Farmer Program loan will be considered a joint operation. One respondent indicated the regulations were not clear as to those applicants who are married and request a farmer program loan if they are considered a joint operation and what the loan limits would be. The Agency agrees and has clarified the regulations to stress that if both parties want to file together, they will be considered a joint operation and both must meet the eligibility requirements. It will be the responsibility of the County Office employees to explain to the applicants that if they insist on filing together, they will be considered a joint operation. If each party has a separate and feasible operation, they can file as individuals and each receive the maximum loan limits. If they file as a joint operation, they are only entitled to one maximum loan limit. The Agency adopts these changes to the proposed rule.

Several parties responded regarding the new emphasis the Agency was placing on the requirements for a cosigner. Their concerns were that the Agency was requiring a cosigner in certain instances. They felt that the only time a cosigner was required was when the applicant had to rely upon the cosigner for repayemnt or that the security provided by the applicant was not adequate to secure the loan request. The Agency agrees and has adopted the change that for Farmer Program loans, a cosigner will be requested only when the applicant cannot meet the repayment or security requirements of the loan request.

Section 1910.4—Processing applications. Several parties responded regarding the information which an applicant must submit to the Agency to have a complete application on which to take action. They were concerned that a number of the items listed were the responsibility of the Agency to provide for a completed application, thus out of the control of the applicant. Other concerns were that an applicant should not have to provide income tax records when the applicant had a set of financial records to support the request; up to five-years production history should also include expense history; and an applicant who is applying to purchase a farm must have an option for the application to be complete. The Agency has amended this section and has adopted these changes.

Several respondents commented that there was no means to identify an applicant as a socially disadvantaged individual on the application. Form FmHA 410–1 has a section which indicates race that the applicant may complete if the applicant so desires. This section will allow those applicants who are members of socially disadvantaged groups and who wish to be considered under the socially disadvantaged program that they may do so. One respondent indicated that they needed a better definition of socially disadvantaged individuals in this section. The definition of socially disadvantaged has been clarified in § 1943.4 of Subpart A of Part 1943 of this chapter. The Agency believes the issue of identification is properly addressed in the application and no changes will be made to the application.

Several respondents commented that the notice of the programs for "socially disadvantaged individuals" would not be provided to an applicant until after a completed loan application was received. The Agency agrees with the comments and has revised its regulations to provide Exhibit B, "Letter to Notify Socially Disadvantaged Applicants/Borrowers About the Availability of Insured Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Inventory Farmland," to all socially disadvantaged individuals at the time they make initial contact with FmHA and/or when an application for FO assistance is received. The proposed amendment is adopted as changed.

One respondent commented that the Agency had not implemented the 1985 Food Security Act which provided that all adverse actions are appealable. The Agency has clarified its appeal procedure and has amended this section to refer to Subpart B of Part 1900 of this chapter for guidance in providing an applicant with appeal rights referring to appealable decisions because Subpart B of Part 1900 controls this aspect of the notification process. The Agency adopts this change to the proposed rule.

One respondent commented that the amendment did not spell out what constitutes "a specific reason" for an unfavorable decision. The respondent went on to indicate that many times an unfavorable decision by a County Committee would be so vague the applicant would not be able to tell for what specific reason the application was rejected. Both §§ 1910.4(j) and 1910.6(b) have been amended to require that the decision maker will clearly state the specific reason(s) for the rejection in the letter to the applicant and the factual justification for this action must be set forth. The Agency adopts this change to the proposed rule.

Several comments were received regarding the time an application remains active and the Agency's determination as to when to withdraw an active application when the applicant has expressed a lack of interest in pursuing the application. This change allowed FmHA the ability to update its application files in a timely and orderly manner. It provided the means for FmHA to maintain files with current financial and operational information so that at a later date, if the applicant wants to proceed with the application, the burden of updating the application will be minimal. There was some confusion on the part of some of the respondents, as they felt the applications received for FO loans would only remain active for 12 months, while the applications for other Farmer Program loans would remain active for 25 months. All applications will remain active for 12 months from the date a completed application is received. If the applicant has indicated that the applicant is no longer interested in pursuing the application and the application has been withdrawn, disapproved or closed, the applications will then be handled in accordance with § 2033.7 of FmHA Instruction 2033–A (available in any FmHA office), which provides for the retaining of these files for 25 months before they can be disposed. For additional clarification, FmHA has amended this section to allow the County Supervisor to notify those applicants whose requests were not funded during the eleventh month following receipt of a completed application, that in order for the application to remain active, the applicant must provide a written notice requesting that the application remain active. The Agency adopts these changes to the proposed rule.

Section 1910.5—Evaluating applications. Several respondents voiced concern that delinquencies that have been resolved through debt restructuring or other forms of primary loan servicing should not be used as an indication of lack of creditworthiness, in addition to foreclosures, judgments, delinquent payments, etc., not being considered as an indicator of unacceptable creditworthiness under certain circumstances, the Agency has adopted an amendment that will include those debts resolved in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter in the list of items which will not indicate an unacceptable credit history. The Agency has also clarified that when non-payment of a debt was due to circumstances beyond the applicant/borrower's control, this will not constitute an unacceptable credit history. The proposed amendment is adopted as changed.

There were also a few respondents who felt that applicants who had their debts settled without payment or had declared bankruptcy were not good credit risks and those items should be deleted from the amendment. The Agency believes that to change the regulation regarding the debt settlement provision would unfairly penalize those applicants who attempted to resolve their FmHA debts within the normal framework and FmHA has agreed to this approach. As far as bankruptcies are concerned, to hold a bankruptcy against an applicant would be contrary to the basic intent of the Bankruptcy Code to provide a debtor with a "fresh start" or "clean slate." Therefore, the Agency does not adopt this suggestion.

Section 1910.6—Notification of applicant. There was one respondent whose major concern with this section was that many times the County Committee will deny eligibility and the County Supervisor would also advise the applicant of the reasons why the loan would have been denied even if the County Committee had determined the application eligible. This practice has an adverse impact on the applicant as the applicant must address all of the feasible reasons in addition to the County Committee's reasons at the appeal hearing. The Agency agrees and has amended this section to include separate eligibility and feasibility sections. The Agency has also amended this section to require that the specific reasons for the adverse action must have a factual basis. Another respondent was concerned about the notification to applicants when funds

become available. The suggestion was to provide the notification by certified mail, return receipt requested. This respondent was also concerned about the fact that, when a County Supervisor requested updated information, if more than 90 days had passed since Form FmHA 1940–1, "Request for Obligation of Funds," was signed, there was no time limit for how long the County Supervisory has to review the information. There was also the concern that additional clarification was needed as to what the phrase "significant changes" meant and how much additional information was needed for the County Supervisor to make the decision. The Agency agrees and the proposed amendment is adopted as changed.

Section 1910.7—Counseling. One respondent commented that many times County Supervisors do not tell farmers about alternative FmHA programs that might be of benefit to them. The Agency has amended this section to require that the County Supervisor will discuss all FmHA programs that might assist the applicant in achieving the applicant's goals. The proposed amendment is adopted as changed.

Section 1910.8—Reaching an understanding. One respondent felt that the Outreach Program and the Targeted Farm Ownership Program should be listed as one of the items to be discussed with the applicant, that a check list should be developed to indicate that each item was discussed, and FmHA should provide written explanatory material to each applicant who may be members of a socially disadvantaged group during this interview process. Sections 1910.4 of this subpart and 1943.13 of Subpart A of Part 1943 of this chapter have been amended to provide information to members of socially disadvantaged groups at initial contacts and also at the time an application is filed. The Agency believes this issue is properly addressed in the appropriate sections and those amendments will be adopted in the respective sections.

Exhibit A to Subpart A of Part 1910. One respondent commented that Exhibit A, "Letter for Information Needed for a Complete Farmer Program Application," needed clarification and rewriting to make it readable for borrowers. The Agency agrees. Examples which the Agency felt needed to be clarified included types of financial information requested, what is meant by up to five years of production history, and a list of all local lenders from whom the applicant is required to obtain written evidence of the applicant's inability to obtain other credit. The Exhibit was rewritten for clarification. The comment regarding "up to five years" should be self-explanatory in that if the applicant has 5 years or more of production history, it would mean the past 5 years, and if the applicant is fairly new in farming, production history would only be required for those years for which it was available. The Agency is concerned that requiring the County Supervisor to provide a list of all local lenders whom the applicant is required to contact regarding other credit could result in the appearance of a conflict of interest if the County Supervisor happens to overlook a couple of lenders in preparing the list and so is not adopting this suggestion. The proposed amendment is adopted as changed.

Exhibit B to Subpart A of Part 1910. One respondent commented that the title to Exhibit B, "Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland," did not make sense and that the readability was beyond the limits of some of the individuals who would receive the Exhibit. The Agency agrees with the comment and has amended the Exhibit so that it addresses only socially disadvantaged individuals and has amended the proposed rule so that it refers back to the original regulation regarding notification to applicants/borrower about the limited resources program.

Clarifying changes were made to § 1910.3(i) to delete out-of-date references to loan programs which are not covered by this regulation.

Subpart B—Credit Reports (Individuals)

Section 1910.52—General. This revision was added to the interim rule to update a reference.

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Developments. This subpart provides guidance in the planning and performing of construction and other development when construction or repairs are needed. Section 1924.1 was amended to add Softwood Timber (ST) loans and remove Recreation (RL) loans. No negative comments were received. The Agency adopts the proposed amendment.

Subpart B—Management Advice to Individual Borrowers and Applicants. This subpart provides guidance to FmHA regarding the providing of management advice to farmer program loan individual applicants and borrowers. This subpart was revised in part to incorporate Section 606 "Planting and Production History Guidelines" of the Agriculture Credit Act of 1987. This section provided for the use of State and county averages when an accurate projection cannot be made because the applicant's past production history has been affected by natural disasters declared under the Disaster Relief Act of 1974. A number of comments were received and the Agency has addressed this section in the appropriate subpart of this section. This section was also revised to incorporate provisions of Section 611 "Income Release," which requires FmHA to release income under certain circumstances. Several comments were received regarding the need for clarification regarding income releases. These comments are addressed in this subpart and also in the appropriate sections of the proposed regulations and the proposed rule has been amended where appropriate.

Section 1924.51—General. The amendment to this section provides for the deletion of Recreation (RL) loan program and the deletion of the Exhibit A "New Full-Time Family Farmer and Rancher Development Committee." No negative comments were received. The Agency adopts the proposed amendment.

Section 1924.56—Credit Counseling. One respondent commented that it appears that subsection (b)(2) of this section was misplaced because it directed a County Supervisor to advise applicants and borrowers of FmHA's credit elsewhere requirements. The respondent felt this was not proper as eligible applicants should have already proven that they could not get credit elsewhere. This section provides guidance to the County Supervisor of his/her responsibility to provide credit counseling to applicants and borrowers. Credit counseling is more than advising applicants and borrowers of FmHA's credit elsewhere requirement. It is a means of providing the applicant/borrower with information about other credit sources that are available and how these credit sources can be utilized, along with FmHA's funds, to best meet the objectives of both the applicant and/or borrower and FmHA. Many times the borrower is able to obtain credit from other sources with the assistance of FmHA's credit counseling which helps the borrower to increase his/her financial knowledge, thus resulting in an informed applicant/borrower who can take advantage of other credit that is available. The Agency has amended subsection (b)(2) of this section by deleting the term borrower as all

persons who are eligible applicants can be a borrower or a new applicant. The Agency adopts the proposed rule as amended.

Section 1924.57—Planning. One respondent requested that FmHA include a statement in this section that FmHA may not use the Coordinated Financial Statement (CFS) form without first obtaining the farmer's written permission. The Agency is prohibited by section 1325 of the Food Security Act of 1985 (Pub. L. 99–198) from using the CFS and so does not need this change to the proposed rule. However, we did add a statement prohibiting its use.

One respondent felt that the statement "These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation" was not flexible enough to allow any flexibility for those operators which might require a plan for a shorter or longer period of time. The Agency agrees and has revised the proposed rule to allow the plan to cover the production cycle.

One respondent suggested that if a livestock borrower is current with his/her payments and in good standing with FmHA that Form FmHA 431–2, "Farm and Home Plan," not be filled out as it would reduce the workload in the County Office. This section relates to the completion of an annual plan of operation and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," which we believe the respondent is referring to instead of Form FmHA 431–2. Form FmHA 1962–1 is required for all borrowers with FmHA loans secured by chattels. The completion of Form FmHA 1962–1 is essential, especially for livestock operators, as it is the means that allows FmHA and the borrower to reach an understanding as to the use and release of chattel security.

Several respondents were concerned that County Supervisors were not provided with proper guidance on how to develop "Key Management Practices" and that once these practices were developed that a list should be provided the borrower and those practices which the borrower has not incorporated into the operation will be incorporated in Schedule D of the borrower's Farm and Home Plan. The Agency agrees and has amended this section to provide guidance to the County Supervisor in developing "Key Management Practices." The guidance provides an example of whom the County Supervisor should consult in developing these practices. Those key practices upon which the borrower and the County Supervisor agree, will be documented in Schedule D of the Farm and Home Plan. The proposed amendment is adopted as changed.

Several respondents commented that the wording regarding plans developed by agencies and organizations outside of FmHA was vague and the final rule should be more specific as to clearly detail the weight given and the effect the various plans might have on the operation. The Agency agrees and has clarified this section to specify those outside agencies from which an applicant can request assistance and that any outside plans developed, which are applicable to the applicant's operation, will be used. If the plan is not feasible then the County Supervisor will document the reasons why in the borrower's case file. The proposed rule is adopted as amended.

There were several respondents who took issue with the proposed definition of a feasible plan. Their major concerns were that not all farming operations have an equal degree of risk and it was not proper to impose an equal reserve for risk for all types of operations and that it was arbitrary and capricious to require that all borrowers live at an "average" standard of living. The Agency agrees and has amended this section to define a feasible plan as a plan based upon actual production and expense records which will pay all operating expenses, meet necessary payments on all debts and provide a living expense which is in accordance with the family's essential need. The proposed rule is adopted as amended.

Several respondents were concerned about the requirement in this section which stated "when an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, County average yields will be used for the disaster year(s)." Their concern was that for those borrowers who were not in a declared disaster area but had a disaster that would have qualified them if the area had been declared as a disaster area.

The Agency agrees and has revised the proposed amendment to allow those farmers who have had a qualifying loss and were not located in a designated/declared area to use county average yields for the disaster year(s). The proposed rule is adopted as amended.

There were several respondents who took exception to the establishment of unit prices by basing the prices exclusively on the past 12 month's prices. If a disaster has occurred during the 12-month period this period would not be a good prediction of future prices as it would reflect the increase in prices due to a shortage of supply. The Agency has revised this section to allow the State Director to consult with State Directors adjoining the State and other knowledgeable agricultural representatives and lenders in establishing commodity prices. These borrowers who have proven accurate records to support a premium price or contracts with well established markets will be allowed to use these prices. The proposed rule is adopted as changed.

One respondent was concerned that while an appeal is pending and the borrower's request for releases were in excess of what would be average for the area that even if the borrower documented the reasons for the release, the regulations do not clarify if FmHA will allow the additional release or how FmHA makes the decision. To clarify this section FmHA has amended this section to provide for additional releases when the borrower has documented and justified the need for them. The documentation, by the borrower, will be the means where by FmHA will be able to make the decision as to the justification of the release. The Agency adopts the proposed amendment as changed.

Section 1924.58—*Recordkeeping.* Several comments were received regarding the keeping and maintaining of records, and the responsibilities of the County Supervisor in assisting the borrower in recordkeeping. It was also requested that the word adequate be defined. The Agency has amended the proposed amendment to require the borrower to maintain a recordkeeping system which will provide a monthly cash flow, a change in financial position, beginning and end of year balance sheets, and an income statement. It will be the responsibility of the County Supervisor to determine that the borrower's recordkeeping system meets the above conditions. It is also the County Supervisor's responsibility to assist those borrowers who are unable to maintain a recordkeeping system. The proposed amendment is adopted as changed.

Section 1924.60—Analysis. One respondent commented that this section on analysis should be clarified as to the conducting of an annual analysis for borrowers who have had their debts restructured. The Agency agrees and has amended this section to clarify for what purposes and when an analysis will be conducted, and how the information that the analysis develops will be utilized. The proposed amendment is adopted as changed.

Section 1924.71—Delinquent borrower. This section has been

amended to clarify that "Status Report of Farmer Programs Accounts, 540" will be sent monthly to each FmHA County Office. No negative comments were received regarding the servicing of these delinquent accounts as proposed in Subpart S of Part 1951 of this chapter. The Agency adopts the proposed amendment as changed.

Exhibit A to Subpart B. Several respondents commented regarding the need for clarification as to release of essential family and operation expenses and the need for a chart to assist the borrower in knowing what items would require prior approval regarding Form FmHA 1962–1 "Agreement for the Use of Proceeds/Release of Chattel Security." The Agency agrees and has amended Exhibit A to clarify the reasons for the form and how it is to be utilized by both the borrower and FmHA. A chart has also been developed which will provide guidance to both the borrower and FmHA as to those items which will need prior consent before the borrower can proceed with the action. The Agency adopts the proposed rule as amended.

There were other respondents who requested minor changes as to the further definition of records and clarification of phases which the Agency has adopted and has amended this section to reflect these changes. Otherwise, the proposed rule is adopted as proposed.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

This subpart provides procedures for receiving and processing insured operating loans, and was revised to incorporate section 602 "definitions" of the Agricultural Credit Act of 1987. This section provided for a classification of the term borrower. No negative comments were received and the proposed rule was adopted. Section 603, "Security for FmHA Real Estate Loans," of the Agricultural Credit Act of 1987 permits a borrower to use the same real estate collateral to secure two or more loans made, insured or guaranteed under this subtitle. The outstanding amount of such loans may not exceed the total value of the collateral. No negative comments were received and the proposed rule was adopted with other minor additions, in the interim rule.

Section 1941.2—Objectives. One respondent commented that this section should be clarified regarding the making of youth loans. The concern was that the present regulation implies that loans to youth can be made to assist them to be family-sized farm operators. The Agency agrees that CONACT section 311(b)(1) provides that loans may be made to youths who are rural residents to enable them to operate enterprises in connection with their participation in 4–H Clubs, Future Farmers of America and similar organizations. The Agency believes that the CONACT specifically states that the youth loan program is to assist rural youth in establishing income-producing projects under the guidance of a 4–H Club. The Agency agrees and adopts the proposed rule as changed.

Section 1941.4—Definitions. Several respondents commented on the feasibility definition. The Agency has incorporated clarification changes, along with other minor changes in language, and additions, in the interim rule.

One respondent stated the definition of "Limited Resource Applicant" refers to Exhibit B which has expired. The Agency agrees with this comment and has deleted the reference to Exhibit B and adopts the proposed rule as amended.

Section 1941.6—Credit elsewhere. Several respondents stated that the credit elsewhere decision should be a County Committee decision not a County Supervisor's decision, and that the proposed rule was not consistent with Subpart A of Part 1910 of this chapter. Subpart A of Part 1910 of this chapter requires that the County Supervisor verify and document that adequate credit is not available before a loan is approved.

While the County Committee is responsible for the determination of eligibility, it is the County Supervisor's responsibility to verify the credit needs and the availability of other credit to the applicant. The County Committee makes the decision regarding the borrower's ability to obtain other credit assistance. The Agency has amended this section to require the County Supervisor to document the availability of adequate credit along with other minor changes and additions in the interim rule.

One respondent commented that borrowers should not be asked to obtain higher cost guaranteed loans. FmHA borrowers are encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management procedures. The guaranteed interest rate reduction program allows the lenders to reduce the interest rate to borrowers in order to develop a feasible plan. The Agency has determined that borrowers are not eligible for an insured loan as long as the guaranteed loan is feasible.

Section 1941.12 Eligibility requirements. Several respondents commented that the eligibility requirement for training or farming experience within one of the past five years is unreasonable. The Agency has amended the proposed rule to provide that educational or on-the-job training, within one of the past five years, may be considered adequate experience. The Agency adopts the proposed rule as amended.

Several respondents commented that if a person has a history of delinquency for reasons beyond his/her control but had made an honest effort to meet his/her obligations that this factor should be considered as a favorable character trait. The Agency agrees and has incorporated the change in the interim rule.

Section 1941.16—Loan purposes. One respondent commented that the OL limitations of $7,500 that could be loaned in a fiscal year for real estate improvements or repairs was not realistic. The Agency agrees and has amended this section to increase the loan limit to $15,000. The Agency adopts the proposed rule as amended.

Section 1941.17—Loan limitations. Several respondents commented that this section should be clarified by stating that the applicant's principal loan balance may not exceed the loan limit for the program. The Agency agrees and has amended this section to state that the total outstanding principal loan balance, including the new loan owed by the applicant, may not exceed the loan limit.

One respondent stated that the reference regarding the Memorandum of Understanding between FmHA and the U.S. Fish and Wildlife Service should be included in this section to insure that all parties involved would know of the assistance that the U.S. Fish and Wildlife Service could provide. The Agency agrees and has incorporated this comment in the interim final rule.

Section 1941.18—Rates and terms. Several respondents commented that the regulations should be changed to state that, "The interest rate for the loan will be the interest rate in effect at the time of the loan approval or loan closing, whichever is lower." The statutory language of the CONACT permits only the lower rate to be used where the applicant request that the lower rate be used. The Agency adopts the proposed rule, along with other minor changes in the interim final rule.

Section 1941.19—Security. This section provides that a borrower is not required to use separate and identifiable collateral to secure two or more loans made, insured or guaranteed, provided the outstanding amount of such loans

does not exceed the total value of the collateral used. Section 603, Security for FmHA Real Estate Loans of the 1987 Farm Bill, states that a borrower may use the same collateral to secure two or more loans made, insured or guaranteed. This subtitle deals only with real estate. One commentor stated that applying this requirement to chattel loan security would complicate loan servicing and liquidation if the borrower had both real estate and chattel loans secured by the same chattel security, and should be prohibited. The Agency agrees and incorporates the change along with minor changes in language and addition in the interim final rule.

One respondent commented that FmHA does not allow borrowers to obtain a subordination for amounts advanced for annual operating and living expenses for the crop year. The Agency has clarified this section to allow subordinations.

One respondent expressed concern that FmHA was making unsecured loans and that this practice should be prohibited. FmHA agrees and has amended this section to provide that the security pledged for loans must be adequate to assure repayment of the loan and other minor changes in language and additions, in the interim final rule.

Section 1941.25—Appraisals. Several respondents commented that FmHA should complete an appraisal for all loans regardless of the loan size and establish qualifications for FmHA appraisers. Currently appraisals are not required when a chattel debt is being refinanced for under $5,000 and for real estate when the security needed is less than $10,000. The Agency agrees and has amended this section to require an appraisal whenever an initial loan is made and has established qualifications for contract appraisers in the interim final rule.

Section 1941.29—Relationship between FmHA loans, insured and guaranteed. Several respondents commented that the relationship between FmHA loans, insured and guaranteed, should be clarified. The Agency agrees and has clarified this section by including an example which will explain or demonstrate the relationship between the two programs in the interim final rule.

Section 1941.33—Loan approval or disapproval. One respondent commented that the loan principal balance could not exceed the guaranteed OL limit of $400,000. This section deals directly with insured operating loans only and the limitation of guaranteed OL is found in § 1941.29. The Agency adopts the proposed rule.

Subpart B—Closing Loans Secured by Chattels

This subpart provides the procedures for closing operating loans secured by chattels. It was revised in part to incorporate comments received on the proposed rule.

Section 1941.54—Promissory note. One respondent commented that FmHA should provide explicit guidance regarding when cosigners are required. The Agency agrees and has clarified this in the interim final rule.

Section 1941.88—Insurance. Several respondents commented that crop insurance should be a loan requirement for crop loans and one commentor stated that it was not necessary for the County Office to maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the date on which a borrower's crop insurance premium is due. The Agency believes that the decision to purchase crop insurance is a key management decision that should be left up to the County Supervisor and the borrower and not an absolute requirement for loan assistance. The Agency has deleted the requirement that the County Office maintain the monthly expiration card for crop insurance premiums only. The Agency adopts the proposed rule as amended.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

This subpart provides the procedures for receiving and processing of insured farm ownership loans. This subpart was revised in part to incorporate section 603, "Security for FmHA Real Estate Loans," which provides for the borrower to use the same real estate collateral to secure two or more loans made, insured, or guaranteed under this subtitle, except that the outstanding amount of such loans may not exceed the total value of the collateral. No negative comments were received and the proposed rule was adopted. This subpart was also revised to incorporate section 617, "Target Participation Rates," and section 623, "Farm Ownership Outreach Program to Socially Disadvantaged Individuals." These sections provide for a farm ownership outreach program for persons who are members of any group with respect to which an individual may be identified as a socially disadvantaged individual to encourage the acquisition of inventory farmland of FmHA and to establish target participation rates, on a county-wide basis, to insure that socially disadvantaged groups will receive farm ownership loans and the opportunity to purchase or lease FmHA's inventory farmland. Several comments were received regarding these sections. These comments are addressed in the appropriate sections of the regulations.

Section 1943.4—Definitions. Several respondents, primarily special interest groups, commented that the definition for a socially disadvantaged applicant should be changed to meet the requirements of section 617 of the Agricultural Credit Act of 1987. The Agency adopts this suggestion in the interim rule.

One respondent suggested that "undivided interest" be included in this section. The Agency adopts this suggestion in the interim rule.

There were several respondents who took issue with the proposed definition of "Feasible plan." Their major concerns were that not all farming operations have equal degrees of risk and it was not proper to impose an equal reserve for risk for all types of operations, and that it was arbitrary and capricious to require that all borrowers live at an "average" standard of living. The Agency agrees and has amended this section to define a feasible plan as a plan based upon actual production and expense records which will pay all operating expenses, meet necessary payments on all debts, and provide living expenses which are in accordance with the family essential needs. The proposed rule is adopted as amended.

Section 1943.6—Credit elsewhere. One respondent suggested that credit elsewhere is a County Committee, rather than a County Supervisor, determination.

While it is the county committee's responsibility to determine eligibility of the availability of other credit, it is the County Supervisor's responsibility to verify the credit needs and the availability of other credit to the applicant. This information must be presented to the County Committee so they can make a factual decision regarding credit availability. The Agency has amended this section to require the County Supervisor to document the availability of adequate credit and has deleted paragraphs (a) and (b) of this section as they are adequately addressed in this section.

Section 1943.10—Preference. Several respondents suggested that farm ownership loans funds be designated for applicants who are members of socially disadvantaged groups to be used exlusively to assist them in achieving FO loan purposes, as outlined in

§ 1943.16 of this subpart. This requirement does not prohibit states from using their regular FO allocation to assist socially disadvantaged applicants. The Agency adopts this suggestion.

Section 1943.12—Eligibility requirement. Several respondents were concerned about the requirement that training or farm experience within one of the last five years is unrealistic. The Agency argues that a person who has been away from farming for a long period of time has lost all concept of the financial and production management requirements that are required in today's farming to insure a reasonable chance of success. The Agency has amended the proposed rule to provide that educational or on-the-job training within one of the past five years will suffice for experience. The Agency adopts the proposed rule as amended.

One respondent suggested that § 1943.12 (a)(4) and (b)(4)(iii) clarify *character*, regarding debt repayment, and whether the applicant has tried to pay his or her loans. The Agency has adopted the suggestion.

One respondent suggested that a person who has substantial farm training or experience, but who did not farm for the past five years, could have the farming ability to assure reasonable prospect of success. As mentioned above the management of a farm has changed considerably in the past few years and recent experience is necessary if one wants to have a reasonable chance of success. The Agency has amended this section to clarify that education or on-the-job training within one of the past five years will suffice for experience, which will assure those that have been out of farming for a long period of time at least has a basic knowledge of current agricultural trends. The Agency adopts this rule as amended.

Section 1943.13—Outreach program for members of socially disadvantaged groups. Several comments were received which suggested that State Directors establish an advisory committee with individuals of organizations working directly with farmers on the local level in order to ensure the successful implementation of the socially disadvantaged program.

The Agency has charged Farmer Program Chiefs, who are familiar with the farm ownership (FO) program, to initiate this program. The National Office will provide each State with the county target participation rates. The County Committee will continue to be responsible for establishing eligibility and County Supervisors will have loan approval authority. The Agency does not feel that the formulation of advisory committees would be beneficial in carrying out the intent of the law. Thus, the Agency does not adopt this suggestion.

Section 1943.16—Loan purposes.—Paragraph (b)(1). One respondent suggested that technical assistance be defined. The Agency finds no need to define technical assistance and deletes the term from the referenced section.

Paragraph (b)(6)(ii). One respondent suggested that "patronized" was a typographical error. The Agency decided that "used" was a better word.

Paragraph (c)(1). One respondent suggested that undivided interest be defined. The Agency adopted the suggestion by adding a definition to § 1943.4 of this subpart.

Section 1943.17—Loan limitations. One respondent suggested that § 1943.17(a)(1) be rewritten to make it clear that the applicant's principal balance cannot exceed $200,000 and, if there is a cosigner, the cosigner's principal balance may not exceed $200,000. It should be made clear that the applicant and the cosigner are not limited to a combined principal balance of $200,000.

The Agency has revised this paragraph to accommodate the suggested change.

Section 1943.18—Rates and terms. One respondent suggested that § 1943.18(c) should be changed to reflect that any borrower who is given a choice between two interest rates will obviously choose the lower rate.

7 U.S.C. 1927a, Loan Programs, stipulates that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by the Farmers Home Administration to housing, farm, water and waste disposal, and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Thus, the Agency cannot change this language of the proposed rule.

Section 1943.23—General provisions. One respondent suggested that reference to the Memorandum of Understanding between FmHA and the U.S. Fish and Wildlife Service § 1943.23(c) be referenced here and also be updated to reflect the latest changes. The Agency will be updating the Environmental Regulation in the very near future to incorporate this requirement. The Agency has adopted the suggestion of the reference and has incorporated this change to the proposed rule.

Section 1943.24—Special requirements. One respondent suggested that § 1943.24(b)(1)(i) should be changed to read: "A real estate lien will be taken on such dwelling, if necessary, to adequately secure the loan.

The Agency does not adopt this suggestion. There may be equity in such property to further secure the interest of the Government.

Section 1943.25—Options, planning and appraisals. Several respondents commented on the need for an appraisal, no matter how small the loan request is, and the need to establish guidance as to the qualifications of the appraiser. Currently, real estate appraisals are not required when the amount of the loan is less than $10,000. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. The Agency has also clarified this section by including contractors who have been authorized to make farm appraisals and established criteria by which the County Supervisor will determine the qualifications of these contractors. The Agency adopted these changes to the proposed rule.

Section 1943.29—Relationship with other FmHA loans, insured and guaranteed. One respondent suggested that this § 1943.29(b)(1) be rewritten to make it clear that the applicant's principal balance cannot exceed $300,000 and, if there is a cosigner, the cosigner's principal balance may not exceed $300,000. It should be made clear that the applicant and the cosigner are not limited to a combined principal balance of $300,000.

The Agency has rewritten this section to make it clear that the total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the applicant does not exceed $300,000 at loan closing. All references to cosigner have been removed from this paragraph. The Agency adopts the proposed amendment as changed.

Section 1943.38—Loan closing actions. One respondent suggested that § 1943.38(h) be eliminated regarding supplementary payment agreements.

The Agency feels that supplementary payment agreements are an essential collection tool for farm ownership loans when borrowers depend primarily upon off-farm income to make farm payments. The Agency does not adopt this suggestion.

Section 1943.43—Subsequent FO loans. Several respondents commented that an appraisal should be considered whenever real estate is taken as security. The present regulations state that a real estate appraisal would only be required when real estate is taken as security and certain conditions existed.

The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. This change will be in line with the requirement in § 1943.25 of this subpart. The Agency adopts the proposed amendment as changed.

Exhibit B to Subpart A—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants. Two respondents commented that the Target Participation Rates are calculated incorrectly. The Agricultural Credit Act of 1987 mandates that direct FO loan funds for members of socially disadvantaged groups be targeted on a county basis. However, the existing allocation formula precludes such a distribution of funds. There is insufficient allocation to ensure that at least one loan could be made in each county with members of socially disadvantaged groups. Funds will be allocated to States based on the rural minority population, with available funds targeted to counties with the largest rural socially disadvantaged population.

Since no comments were received on other areas of the proposed rule of this subpart, the proposed rule is adopted as published, except for minor necessary clarification and editorial changes.

PART 1943

Subpart B

This subpart provides guidance for the making of Insured Soil and Water Loans.

Section 1943.54—Definitions. There were several respondents who commented on the proposed feasibility definition. The comments were the same as those addressed in Part 1943, Subpart A, § 1943.4. Please refer to this section in the Agency's response.

Section 1943.62—Soil and water loan eligibility requirements. Several respondents commented that the regulations should be clarified that character regarding debt repayment should focus on whether or not the applicant has tried to pay his/her loans. They suggested that if a person has a history of delinquency for reasons beyond his/her control and had made a honest effort to meet the obligations that this factor should still meet the good character requirements. The Agency agrees and has adopted the proposed rule as amended.

Section 1943.68—Rates and terms. Several of the respondents commented that the regulations should be changed to state that "The interest rate for the loan will be the interest rate in effect at the time of the loan approval or loan closing, whichever is lower." This requirement is set forth in the CONACT in (7 U.S.C. 1927a) Loan Programs. Thus, the Agency cannot change this language of the proposed rule.

Section 1943.75—Options, planning and appraisals. Several respondents commented on the need for an appraisal no matter how small the loan request is and the need to establish guidance as to the qualifications of the appraiser. Currently, real estate appraisals are not required when the amount of the loan is less than $10,000. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. The Agency has also clarified this section by including contractors, who have been authorized, to make farm appraisals and established criteria by which the County Supervisor will determine the qualifications of these contractors.

Section 1943.77—Relationship with other FmHA loans, insured and guaranteed. Several respondents commented that the relationship between FmHA loans, insured and guaranteed should be clarified. The Agency agrees and has amended this section by including an example which will further clarify the relationship between the two programs. The Agency adopted these changes to the proposed rule.

Section 1943.93—Subsequent SW loans. Several respondents commented that an appraisal should be considered whenever real estate is taken as security. The present regulations state that a real estate appraisal would only be required when real estate is taken as security and certain conditions existed. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. This change will be in line with the requirements of § 1943.75 of this subpart. The Agency adopts the proposed amendment as changed.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

Sections 1943.101 through 1943.150 have been removed and reserved because the program has not been funded since FY 1981 and there are no plans to fund it in the future. Removing the regulation will reduce the Government's cost of revising and maintaining the regulations. No comments were received on this so it is adopted as proposed.

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

Section 1944.23—Loans to Farm Ownership (FO) Individual Soil and Water (SW), and Recreation (RL) borrowers. Section 1944.23 has been revised to change a reference from Subpart A to Subpart S of Part 1951. No comments were received on this so it is adopted as proposed.

PART 1945—EMERGENCY

Subpart C—Economic Emergency Loans

Section 1945.119—Consolidation, rescheduling, reamortization and deferral and Section 1945.149—Additional loans. Sections 1945.119(a) and 1945.149(b) have been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter. No comments were received on these so it is adopted as proposed.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Section 1945.168—Rates and terms. Section 1945.168(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951. No comments were received on these amendments so it is adopted as proposed.

Section 1945.169—Security requirements. Section 1945.169(a)(3) is revised to conform with applicable changes for security in other regulations as a result of comments received on this subject.

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

Section 1951.7—Accounts of borrowers. Sections 1951.7(d)(1) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1951.7(f) has been deleted. Paragraph (g) has been renumbered to (f). This is no longer needed. The information will be obtained through field office terminals. Paragraph (h) has been renumbered to (g).

Section 1951.8—Types of payments. Section 1951.8(a) has been revised to change "Finance Office" to "lock box facility(s)."

The introductory paragraph of §§ 1951.9 and 1951.10 has been revised to provide that the rules on distribution of payments apply only after the County Supervisor decides how much of the

proceeds will be released for other purposes. This is to make sure proceeds will be released for family living and farm operating expenses before making payments to FmHA.

Section 1951.25—Review of limited resource FO and OL loans. Section 1951.25(b)(5) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Sections 1951.33 through 1951.49 have been removed and reserved. These paragraphs have been transferred to Subpart S of this part.

Exhibit titles of Subpart A of Part 1951 of this chapter have been removed and reserved.

No comments were received on these amendments so they are adopted as proposed.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

Section 1951.262—Action when borrower fails to cooperate, respond and/or graduate. Section 1951.262(c)(2) is amended to remove FmHA Forms 1924–14, 1924–25 and 1924–26 as these forms are removed from all the FmHA regulations. This was overlooked when the proposed rule was published.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

Section 1951.314—Reamortization. Section 1951.314(a)(8) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

No comments were received on this so it is adopted as proposed.

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

Section 1951.558—Decision on servicing actions. Paragraphs 1951.558 (c)(1)(ii) and (c)(1)(iii) were revised in the proposed rule to replace Forms FmHA 1924–25 and 1924–26 with Exhibit A and Attachments 1 and 2. No comments were received on this. However, in view of comments made on other regulations, these paragraphs were revised to follow the procedures Subpart A of Part 1955 of this chapter without exception.

Subpart S—Farmers Program Account Servicing Policies

The proposed rule added this regulation. Previously, the major FmHA FP loan servicing programs were dispersed throughout various regulations. The recodified regulations combines the existing loan servicing programs as modified and include the significant loan servicing requirements of the Agricultural Credit Act of 1987 (ACT). This will make it easier for the FmHA field staff and borrowers to read and interpret the Farmer Program Servicing regulations.

This subpart was the major area of discussion of many of the comments. The following appear to be the most significant points addressed by the respondents:

Procedures for timely consideration of Preservation Loan Service Programs; shared appreciation agreements and the request for additional collateral in Primary Loan Servicing Program considerations; debt restructuring notices to accelerated borrowers who did not respond to the "Notice of Right to Request Income Release;" proposed regulatory provisions that were interpreted to prohibit reconsideration of Primary Loan Service Programs if a borrower becomes delinquent on a previously serviced loan; the definition of "circumstances beyond the borrower's control;" the definition of "good faith;" recovery value calculations; readability of FmHA notices; contents of DALR$ computer program and printout; and what constitutes a feasible plan.

These points are discussed in accordance with the applicable Section of the Subpart.

Section 1951.901—Purpose. This section describes the policies and procedures that Farmers Home Administration (FmHA) will follow in servicing most Farmer Program loans. Examples of loan servicing actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, (including Softwood Timber (ST) loans) and reduced interest rates, write down of debt (including Conservation Easements), or any combination of these actions. These actions are referred to as Primary Loan Service Programs. This Subpart also includes Preservation Loan Service Programs, stated as Homestead Protection and Leaseback/Buyback and are set forth in specific Sections in this Subpart.

Several respondents were not in favor of the debt restructuring with write down. These respondents stated various reasons why FmHA should not write down FmHA Farmer Program borrowers' delinquent loans and continue with them under the regular loan programs. Generally, these respondents felt that the legislation was not fair to the many FmHA borrowers who have made sacrificies to keep their loans current. Several of the respondents referred to the write down as "bail out legislation" for poor farm operators. One respondent stated that "our troubled farmers have caused their own problems that they are in today." One respondent stated "it seems that our Government is confused as to just what it wants to do. On one hand, they are spending billions of dollars trying to reduce the agricultural surplus and on the other hand, they are spending billions trying to keep farmers in business and producing that shouldn't be there anyway."

One FmHA farmer program borrower wrote "I feel this is most unfair and feel that I also, because I am a good farmer and did not live beyond my means, should be given the same rights and privileges. So, at this time, I am suspending payments to FmHA until it is explained to my satisfaction why I should not be given these same privileges."

Several respondents wrote in favor of the proposed restructuring of FmHA farmer program loans with write down and preservation loan service programs. One respondent wrote "loan assistance from FmHA in the form of a write down of existing debt, making it possible to modernize the plant and equipment to state-of-the-art would assure the long term existence of (name of respondent) and payout of the FmHA-backed bank loan." Another respondent writes, "I have advocated the implementation of a forgiveness clause for several years to assist those deserving farmers who, by no fault of their own, have lost everything they owned farming." Many form letter type responses were received from the public supporting the restructuring with write down of FmHA farm debt stating, "Congress passed the Agricultural Credit Act of 1987 to help family farmers save their farms. It is now up to FmHA to make sure that the debt restructuring and other programs that Congress gave FmHA the authority to use will help farmers save their farms."

The Agricultural Credit Act of 1987 (ACT) provides for substantial revision in FmHA farmer program loan servicing. The loan restructuring provisions of the Act provide for a write down of delinquent debt to the net recovery value of collateral when the return to the Government under the restructured debt is at least as great as the return from involuntary liquidation.

One respondent noted that § 1951.901 should be amended to clarify that just because the Farmers Home Administration may have made an improper decision in granting a farmer a loan, it should not be considered

unauthorized or a nonprogram loan for purpose of loan servicing.

The Agency agrees that if FmHA was at fault in issuing a loan, the farmer borrower should be provided with the same rights to loan servicing, appeals, and release of production income as any other farmer program borrower. Section 1951.901 is amended by revising to state that if FmHA or a court of law determines that FmHA was at fault in issuing a loan, the farmer borrower's FmHA loan account will not be considered unauthorized or a nonprogram loan, for purposes of Primary and Preservation Loan Service Programs. When FmHA makes every effort to correct unauthorized assistance, such loans are serviced as authorized loans and therefore may be considered for all servicing options.

One respondent stated that in § 1951.901, examples of loan servicing actions that FmHA may take should specifically state "Conservation Set-Aside."

The "Conservation Easement Program" is a form of write down of a distressed FmHA farmer program loan just as the softwood timber loan program is a form of deferral. This has been clarified in § 1951.901.

Section 1951.902.—Policy. Any FmHA farmer program borrower may request Primary or Preservation Loan Service Programs in this subpart at any time. The borrowers must be unable to pay their debt as scheduled before FmHA will use Primary or Preservation Loan Service Programs. The borrower's account must be managed with an overall objective of keeping the farmer in business while at the same time minimizing loses to the Government.

One respondent stated that the time required to thoroughly analyze each write down candidate was unrealistic. The timeframe should be 6 months or more.

The Agricultural Credit Act of 1987 requires FmHA to make the determination and notify the borrower in writing, of the results, within 60 days after receipt of a written request for restructuring.

Several respondents stated that since FmHA has the authority to enter into Preservation Loan Service Program agreements prior to actual liquidation and foreclosure, that all borrowers who respond to the "Notice of the Availability of Loan Service Programs" should be automatically considered for Homestead Protection and Leaseback/Buyback. The Agency agrees that all borrowers who respond to the "Notice of Availability of Loan Service Programs" should be considered for Preservation Loan Service Programs if the borrower's debts cannot be restructured. This section is clarified to state that FmHA may enter into Homestead Protection and Leaseback/Buyback Agreements prior to any acceleration of liquidation actions.

Several respondents stated that, in the Phase I referred to in this section, it was not clear whether the tools of rescheduling and reamortization would be available to all borrowers who are already delinquent on their loans and who will be provided notice of the availability of loan servicing under the Primary Loan Service Programs. This section is amended to state that rescheduling and/or reamortization must be used before an account gets behind schedule as well as used for accounts that are behind schedule. The County Office employees will review farmer program loans annually, prior to the date the annual payment is due, in order to determine what servicing actions are needed to properly service a borrower's accounts.

One respondent suggested that the specific calculation formula contained in the regulation be stated in the discussion of Phase III of this section and, the section requiring an appraisal of all collateral, should require that the appraisals be in compliance with the standard appraisal provisions outlined in the regulation. The Agency agrees with these suggestions and has amended the rule to incorporate this comment.

Phase III of this paragraph stated that when the borrower's debts could not be restructured, the borrower is placed in Phase IV and liquidation will be required.

Several respondents pointed out that all delinquent borrowers who are sent the notice of loan service programs are entitled to apply for Homestead Protection and Leaseback/Buyback Programs prior to FmHA actually accelerating the loans and taking the property into inventory, and that these borrowers must be advised of and considered for these programs prior to actual acceleration or liquidation. The Agency agrees with this comment and has incorporated the change, along with other minor changes in language.

Section 1951.902 of the proposed rule indicated that FmHA will use an approved computer program to assist in finding and documenting the loan servicing program that will provide the best net recovery to the Government and keep the farmer on the farm.

Several respondents commented that since the ultimate decisions on servicing FmHA loans will be made through the use of this computer program, it is important that the computer program be made available to the general public. The respondents pointed out that complete instructions should be made available to the public for comment as if it were a proposed rule.

The Agency has considered this view and has added a separate Exhibit J to fully explain and provide instructions on how the "Debt and Loan Restucturing System (DALRS)" is used to assist in finding the loan servicing programs best suited for a borrower's farming operation. Since this rule will be published as an interim rule, the public will have an opportunity to review and comment on these new exhibits. However, because of conditions in the farming community and FmHA's statutory mandate requiring rapid implemetation of these rules, they will take effect as interim rules. This requires that final rules be published after the comment period.

Section 1951.903—Authorities and Responsibilities. Section 1951.903, paragraph (b), provides that only State Directors are authorized to write down a borrower's debt.

The comments on this section indicated that it would be very difficult and time consuming for one person to be making ultimate decisions on write down of debt. They suggested the regulations should be outlined in sufficient detail to ensure that County Office employees are capable of making decisions on write down of debt.

The Agency agrees that the regulations should be written in sufficient detail to ensure that County Office employees can recommend decisions on write down of debt. However, the Agency does not agree that the write down be approved at any level below the State Director. The Agency currently has placed the debt settlement authority at the State Director level and believes that write down approval must remain at the State Director's level for internal control of the write down process.

This section also includes a provision that allows County Supervisors to reschedule debt or reamortize borrowers' debts only once. If further rescheduling or reamortization is necessary, then it must go to the next higher level of FmHA's supervision. Also, if any further action was needed, it would have to be based on whether the borrower was reducing the principal and making all payments on the interest.

The comments on this section indicated that these restrictions seemed to be contrary to the intent of the Agricultural Credit Act. They pointed out that denying these delinquent borrowers an opportunity to reschedule or reamortize their loans a second time

and requiring them to immediately go into principal and interest write down or other types of primary loan servicing would simply require the Government to loans more money on these borrowers' accounts.

The Agency agrees with these comments and has incorporated this suggestion.

Section 1951.906—Definitions. Several respondents, including FmHA field offices and special interest groups, commented on several of the definitions in this section.

One respondent stated that the definition of "delinquent borrower" should be amended to read "a borrower who has failed to make all or part of the payment which is due for 30 or more calendar days after the due date." This would ensure that borrowers who have attempted to make partial payments but are unable to make their whole payment will be provided the opportunity to use the Primary Loan Service Programs when they first begin to get into trouble on their loan payments. The Agency agrees and adopts this suggestion.

One respondent suggested that the definition of "farm plan" should prohibit the required use of Coordinated Financial Statements without consent of the borrower. The Agency agrees and the definition has been amended to state that FmHA will not require the use Coordinated Financial Statements.

A number of respondents commented on the definition of "feasible plan." Paragraph (b) of the proposed definition states "to meet scheduled payments on all open accounts and on all other debts, some of which may include delinquent taxes." One respondent recommended the definition be amended to state that if there are outstanding debts to suppliers which would not be ordinarily placed on a scheduled repayment plan, FmHA and the borrower should attempt to contact the supplier and work out a reasonable schedule of payments. This problem should be dealt with in the mediation or voluntary meeting of creditors process. See § 1951.912 of this subpart.

Several respondents objected to a 5 percent reserve requirement in the definition of a feasible plan that would allow for "risk and uncertainties." The Agency agrees that if a borrower is able to show a feasible plan without this 5 percent reserve, the borrower should not be denied FmHA's services. The 5 percent reserve requirement has been removed.

One respondent objected to the requirement that the plan must include an average standard of living for the family members, stating that many farmers for years have been living at a standard below poverty level. The respondent stated that the average family standard of living should not be strictly based on the average of actual living expenses for farmers over that time period. The Agency agrees and has removed the reference to "average" standard of living and substituted the wording "which is in accordance with the essential family needs," along with other minor changes.

One respondent recommended that the definition of "liquidation" be amended to clarify that simply the filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's account. The Agency agrees and adopts this recommendation.

One respondent recommended that the definition of "Primary Loan Service Programs" should be amended to refer to the eligibility criteria for each of the individual types of primary loan servicing.

The Agency has recodified the loan servicing regulations. They were revised and incorporated in this subpart as indicated above. The proposed rule did remove obsolete and unfunded loan program regulations. Minor changes in language and additions in the interim rule have been made to clarify the internal effect of recodification of the regulations. The proposed rule definition of "Primary Loan Service Programs" is adopted and is consistent with the eligibility requirements of the Act.

Section 1951.907—Notice of Loan Service Programs. This section allows FmHA to notify borrowers whose accounts are at least 180 days delinquent of Primary Loan Service and Preservation Loan Service Programs. Paragraph (b) requires FmHA to notify borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987. This includes borrowers who did not apply for debt restructuring within 45 days after receiving the FmHA's "Notice of Right to Request Income Release."

Several respondents commented that the notice appeared to deny borrowers whose accounts have been accelerated, an opportunity to apply for any kind of Primary Loan Servicing or debt restructuring. The rule has been amended to clarify that all farmer program borrowers whose accounts were accelerated but have not been foreclosed or liquidated will be sent Exhibit A with Attachments 1 and 2. Those borrowers who do not respond within 45 days after receiving the FmHA notice will then be sent Attachment 7, "Notification of Continued Acceleration of Loans, Notice of Borrower's Rights," and Attachment 8, "Response to Notice Informing Me of FmHA's Intent to Continue to Accelerate My Loan."

Several respondents commented that paragraphs (b) and (c) of this section should be clarified to state that the 30-day period for the borrower to pay the entire payment, or request voluntary conveyance be amended to state 30 days after receipt of the farmer's response to Attachment 7. Otherwise, it is not clear whether the 30 days runs at the same time as the 45 days in the same section. The Agency agrees and adopts this recommendation, along with minor changes in language.

Several respondents recommended that paragraph (e) of this section be clarified by stating that the fact that a prior lienholder or a junior lienholder is foreclosing, does not take away the borrower's rights to receive the "Notice of the Availability of Loan Service Programs." The Agency agrees and has amended this paragraph to incorporate the change, along with other minor changes in language.

Several respondents suggested that paragraph (f) of this section be amended to clarify that, after any final FmHA decision that does not result in a resolution of the loan defaults, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter. Also, paragraph (g) of this section and paragraphs (a) and (b) of § 1951.908 were identified by the respondents as needing clarification regarding which attachments are to be sent and what information is needed to fill out a complete financial statement and to prepare a Farm and Home Plan. The Agency agrees and has made minor changes in language for clarification purposes.

Several respondents stated that the proposed regulation be clarified to make it clear that borrowers notified of Primary Loan Service and Preservation Loan Service Programs be considered for both of these programs prior to acceleration or liquidation. The respondents recommended that FmHA first consider the borrower for the Primary Loan Service Program and if not eligible or the debt cannot be restructured, automatically consider the Preservation Loan Program. If the borrower is found ineligible for either program, appeal rights should be given separately for each adverse decision. The Agency agrees with this comment and has incorporated the change in §§ 1951.909(i)(2) and 1951.911(a)(1)(i).

Two paragraphs designated (c) and (d) have been added. Section (c) covers bankruptcies pending on January 6, 1988, the effective date of the Agricultural Credit Act of 1987. The Agency has added this paragraph in response to a comment concerning the proposed rule

at § 1962.47. The respondent stated that the proposed rule would exclude borrowers who filed bankruptcies around the effective date of the Act. In accordance with paragraph (c) FmHA will send notices to the attorneys of borrowers whose bankruptcies were pending on January 6, 1988, whose accounts have not been foreclosed or liquidated.

However, as provided in paragraph (d) Chapter 7 borrowers discharged prior to January 6, 1988, but who have not reaffirmed their debt to FmHA, will not be sent the notices. This paragraph has been added in response to a comment which stated that Chapter 7 discharged borrowers should not be sent the notices because they do not have a personal obligation to pay their debt to FmHA. The Agency agrees with this comment except for borrowers who have reaffirmed their debt to FmHA. This policy is required by section 343 of the Consolidated Farm and Rural Development Act as added by section 605 of the Agricultural Credit Act of 1987 which defines borrowers as, "* * * any farm borrower who has outstanding obligations to the Secretary * * *" This definition continues FmHA's policy in effect on the date of the 1987 Act which provided servicing relief to Chapter 7 discharged borrowers only if they reaffirms their debt. FmHA informed the attorneys of these borrowers of this policy when they filed for bankruptcy by sending Exhibit D of Subpart A of Part 1962 of this Chapter (available in any FmHA office).

Regarding Chapters 11, 12, or 13 borrowers with confirmed plans on January 6, 1988, paragraph (d) states the attorney of these borrowers will be sent the notices if the borrowers are 180 days delinquent. These borrowers have obligations to FmHA under their bankruptcy plans. The agency believes section 605 of the Act requires that these borrowers be sent the notices.

Section 1951.909—Eligibility. This section has been re-titled and is set forth in the interim rule as subsection (c) of "Processing Primary Loan Servicing Requests." This section in the proposed rule states that a borrower who has applied for the Primary or Preservation Loan Service Program must meet all of the requirements listed. This section as published in the proposed rule, sets forth eligibility criteria for Preservation Loan Service Programs and some of the Primary Loan Service Programs.

Several respondents commented that there is no justification for requiring that the delinquency on the FmHA loan accounts be "due to circumstances beyond the borrower's control", and "that the borrower must have acted in good faith" in order to be eligible for the Homestead Protection or Leaseback/Buyback Programs. The statutory provision that sets out the circumstances "beyond the borrower's control" and "good faith" eligibility requirements, relate only to the debt restructuring provisions of the Act. The Agency agrees with this comment and has incorporated this change by removing the reference to the Preservation Loan Service Programs from the section that sets forth eligibility for the Primary Servicing Programs.

Several respondents commented on the "circumstances beyond the borrower's control." The respondents stated that there is no justification for narrowing the previous acceptable definition contained in the old deferral regulations in 7 CFR Part 1951, § 1951.44(b)(1). The Agency agrees with the comment that the failure to pay real estate taxes and property insurance premiums when due is not necessarily the fault of the borrower and, therefore, should not be included in the definition of "good faith." The Agency has incorporated the change, along with other minor changes in language and additions.

Several respondents objected to FmHA requiring borrowers to give additional real estate collateral in order to restructure their loans. The respondents argue that if FmHA were to go through a forced liquidation, the only collateral that it would acquire and then liquidate to recover on the loan would be the collateral that it had at the time of liquidation. The respondents state that requiring additional security for the restructuring is in violation of the Congressional intent of the statute. FmHA has reexamined this requirement and believes that the additional collateral may be contrary to Congressional intent. Accordingly, FmHA has removed this requirement from the interim rule.

Section 1951.910.—Primary loan service programs—additional requirements. This section of the proposed rule has been moved to § 1951.909 and § 1951.910 entitled [Reserve]. This section lists all of the types of property that can be used to secure a reamortized or rescheduled loan.

Several respondents commenting on this section stated that while this section does not specifically state that FmHA is going to require that the borrower place all of his/her property as security when the loan is rescheduling or reamortized, the section implies that FmHA will be asking for additional security in order for the borrower to obtain rescheduling and reamortization. The respondents state that Congress in no way intended that as a condition for any type of servicing or debt restructure, FmHA require that the borrower provide additional collateral for the restructured loan. Under FmHA's other regulations, it is described as an exceptional circumstance under which chattel will be taken to secure a real estate-type loan and real estate will be taken to secure a chattel-type loan. The respondents state that this should remain the practice. The Agency agrees that FmHA farmer program borrowers should not be required to further secure their loans as a condition for restructuring.

Paragraph (c)(7)(i) now designated § 1951.909(e)(3)(vii)(A) provides that recoverable cost items will be added to principal as of the date the new note is signed. This paragraph also states that "the County Supervisor will determine the amount of interest and principal owed on the date the new note will be signed."

Several of the respondents commented that "recoverable cost items" have not been defined in the regulation and also, that the section should clarify whether FmHA intends for the borrower to make a payment of some principal and interest on the date that the loan is deferred.

"Recoverable cost charges," as defined in 7 CFR Part 1951, Subpart A, are those which the loan agreement documents say the borrower is primarily responsible for paying and, which the Government can charge to the borrower's account. The wording has been clarified. The statute does not permit the capitalization of accrued interest that is not more than 90 days past due. This section is clarified to state that accrued interest not more than 90 days past due will be repaid in equal amortized installments during the term of the loan consolidated, rescheduled or reamortized, as applicable. Also, revisions have been made to clarify that FmHA does not require a payment of principal and/or interest on the date a loan(s) is deferred unless the borrower is able to make such a payment.

Several respondents commented on paragraph (c)(8) of this section which provides that a supplemental payment agreement be entered into when the borrower has a substantial increase in income and repayment ability during the deferral period. The respondent suggested that this section specify that when doing the analysis to determine whether there is a substantial increase in income and repayment ability, that FmHA determine whether this increase actually exists by comparing it to the

original plan developed in the course of the deferral application and, also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt repayment. The Agency agrees and has incorporated this suggestion with minor revisions for clarification. Also, this paragraph has been revised to state that a borrower may appeal an adverse action regarding the signing of a supplemental payment agreement. The borrower will be notified of any Primary and Preservation Loan Service Programs and given an opportunity to apply for them, either before or after an appeal related to a payment agreement.

Several respondents commented that the requirements of the highly erodible and conservation provision of the Food Security Act of 1985 should not be required of borrowers in order for the borrower to be eligible for debt restructuring. The Sodbuster/Swampbuster requirements apply to loan making (insured and guaranteed), transfers and assumptions, subordinations and leases and credit sales of inventory property. See Exhibit M of 7 CFR Subpart G of Part 1940. Therefore, the Agency has clarified the proposed rule to require compliance with the sodbuster/swampbuster rules only when these requirements apply.

One respondent suggested that paragraph (e)(4) be clarified to state that the borrower should only have to participate in negotiation with creditors who do not have sufficient security for their debt and who represent a substantial portion of the borrowers debt. The Agency adopted this suggestion. Also, paragraph (e)(5) of this section has been clarified as suggested by this respondent by stating that the remaining debt after restructuring with the Primary Loan Service Programs can be rescheduled/reamortized or deferred in accordance with paragraphs (a), (b) and (c) of this section.

Section 1951.911—Processing write-down requests. This section is now entitled "Processing Preservation Loan Service Program Request." This section as published in the proposed rule was entitled Processing Write Down Requests and has been redesignated to § 1951.909. One respondent pointed out that paragraph (a)(1)(ii) should be amended to reflect that all expenses should be based on the average holding period when calculating the recovery value of liquidated loan collateral. The Agency adopts this suggestion in the section redesignated as § 1951.909(f)(1)(ii).

Several respondents commented that paragraph (d)(3) of this section should be clarified to indicate that the borrower does not have to exclusively appeal the current market appraisal in order to be entitled to the independent appraisal. Also, the respondent suggested that the review officer as well as the hearing officer review the independent appraisal at each stage of the appeal process. The Agency agrees with these comments and has incorporated the changes in § 1951.909(i)(3), along with other minor changes to clarify the qualifications of an independent appraiser.

Several respondents objected to paragraph (e)(7) of this section that requires FmHA to take a lien on all real estate owned by the borrower if it is going to write down debt, even if the borrower had not previously pledged the real estate as security on the loan. The respondent stated that such action will put the borrower in very significant disadvantage in that the borrower will have no security in order to obtain operating credit in the future. Also, the respondent stated that Congress did not intend for FmHA to collect on restructured loans by requiring real estate security for write down of chattel loans. The Agency agrees and has removed this paragraph.

The Agency has redesignated and clarified the requirements contained in paragraph (f) regarding the processing of net recovery buyout recapture agreements. These requirements are not contained in § 1951.913 of the interim rule.

In the proposed rule, Exhibit J set forth the provisions of the Leaseback/Buyback Program. The Program has been moved from Exhibit J to § 1951.911(a) of this subpart to combine Leaseback/Buyback and Homestead Protection in the same section of the regulations under the title of "Preservation Loan Service Programs." This improves readability, the logical flow and the conformity of the regulations.

Several respondents commented that once a borrower responds to the "Notice of the Availability of Loan Service Programs," that if the applicant is not determined eligible for Primary Loan Service Programs the applicant should automatically be considered for Leaseback/Buyback. The Agency agrees and has revised the regulations to require that applicants for Primary Loan Service Programs are also considered for Preservation Loan Service Programs. These changes have been incorporated in the interim rule.

Section I.B states that the Leaseback/Buyback Program will be available to people whose property was in inventory prior to January 6, 1986, only if the former owner/previous operator was not advised of his/her Leaseback/Buyback rights under the previous regulations.

Several respondents commented that people whose property was in inventory prior to January 6, 1988, should have the right to priority consideration for Leaseback/Buyback.

The statutory language specifically requires these individuals whose property was in inventory and such property contained a dwelling that they be notified of their rights to Homestead Protection regardless of when it was taken into inventory. The Congress, however, did not specify that those former owners whose farm property was in inventory prior to January 6, 1988, be notified more than once of their Leaseback/Buyback rights. Those former owners whose properties were acquired prior to January 6, 1988, were advised of their rights to lease or purchase the property in accordance with the provisions established by the Food Security Act of 1985. If they were not advised of these rights (for example, property acquired shortly before January 6, 1988) then they will be accorded rights under this regulation. Therefore, the Agency is not adopting this comment.

Section I.C.9 of Exhibit J of Subpart S of the proposed rule states that the previous operator is the operator who was leasing the farm at the time the property was taken into inventory.

Several respondents recommended that priority consideration should be given to an operator who has been leasing the land from FmHA and who was not the operator at the time FmHA took the land into inventory.

The statutory language for Leaseback/Buyback does not permit priority consideration be given to operators who leased the property from FmHA. Section 335(e)(1)(c)(iii), as added by Section 611 of the Agricultural Credit Act, requires that priority consideration be given to the "immediate previous family-size farm operator of such acquired property." Those operators that lease property from FmHA will have equal opportunity to lease or purchase the property when it becomes available to lease a sale to all eligible operators. The Agency did not adopt this comment.

Section I.C.II through II.B.2. of Exhibit J of Subpart S defines suitable inventory property for which FmHA can make a loan and sets forth the appropriate notice to be sent to borrowers prior to FmHA taking property into inventory; and circumstances under which FmHA

may be able to finance the purchase of the property through a credit sale.

Several respondents suggested these sections should be clarified to state that all property that is in inventory would fall within the types of property for which FmHA could make a loan and would be classified as suitable. The Agency has revised the definition of suitable property to include all farmland properties that can be used for general farming purposes irregardless of size and, also, to state that an owner will be notified of the Leaseback/Buyback Programs prior to FmHA's acquiring title.

Section II.A.2. of Exhibit J, now § 1951.911(a) of Subpart S, requires FmHA to insert specific provisions into a conditional credit sale contract with the buyer. These provisions state that FmHA's obligations are contingent on the owners meeting FmHA's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close.

Several respondents commented that this section should be amended to permit closing of the credit sale at the same time as the borrower signs over the title to the property to FmHA when the owner is agreeing to voluntarily convey property in exchange for the buyback. The Agency agrees with this comment and has incorporated the change in the interim rule. Because of the possibility that FmHA could acquire the property by being a successful bidder at a prior lienholder's foreclosure sale, the provisions for a non-simultaneous conveyance and leaseback/buyback have been retained.

Section II.B.3 of Exhibit J, now § 1951(a) of Subpart S, states that when the borrower is agreeing to pay in cash, the County Supervisor will enter into the "Standard Sales Contract," with contingences.

One respondent recommended that the contingencies of the sale contract be published in proposed form in order to obtain public comment before final rules are issued. The contingency was inadvertently not published in the proposed rule and the Agency has incorporated the contingency in the interim rule. The contingency is that FmHA must acquire title within 2 years. Comments will be received for a 60-day period during the interim period and will be considered before final rules are issued.

Section III.A. of Exhibit J, now § 1951.911(a) of Subpart S, provides for a notice to be sent to borrowers whose property has been acquired by FmHA advising them of the availability of the Leaseback/Buyback Program.

One respondent commented that borrowers should be given a specific date by which they must respond to the notice advising them of the availability of the Leaseback/Buyback Programs. The Agency has revised its rules to provide that the former owner has 180 days to make application to enter into a lease or purchase agreement. These changes have been incorporated into the interim rule.

Section III.B. of Exhibit J, now § 1951.911(a) of Subpart S, states that the spouse, child, or entity members exercising his/her priority right to Leaseback/Buyback must notify FmHA of their intent to request Leaseback/Buyback within 190 days of FmHA acquiring the property.

Several respondents commented that FmHA should notify the borrower of the date upon which the application should be submitted in order to give FmHA sufficient time to consider the application and to enter into a lease or purchase agreement with them. The Agency agrees and has revised the regulation by requiring that an application for the spouse, children or entity member must be filed within the 190 day timeframe and has removed the 190 day timeframe for entering into a lease purchase agreement. These changes have been incorporated into the rule.

Section III.C. Exhibit J, now § 1951.911(a) of Subpart S, gives the previous operator 30 days from the date he/she is notified about Leaseback/Buyback to enter into a lease or standard sales contract.

One respondent suggested that the 30-day period be extended to 60 days. This 30-day period is extremely short, considering the time that FmHA must spend to review the previous operator's application and close the transaction. The Agency agrees and has removed the 30 day requirement to enter into a lease or purchase agreement. The operator must, however, make application within 30 days. These changes have been incorporated in the rule.

Section III.D. of Exhibit J, § 1951.911(a) of Subpart S, provides for free and knowing waiver of a person's or entity's right to Leaseback/Buyback.

One respondent suggested that FmHA provide a waiver form that will be used by borrowers waiving their rights to Leaseback/Buyback Programs. The Agency has adopted this comment by adding Exhibit Q, "Waiver of Leaseback/Buyback Rights," to the subpart in the interim rule.

Section V. Exhibit J, now § 1951.911(a) of Subpart S, deals with leaseback eligibility. The County Supervisor is required to determine whether the applicant for Leaseback/Buyback has financial management skills and financial resources to assure a reasonable prospect of success in the farming operation. Several respondents commented that "Circumstances beyond the applicant's control" is relevant only if it reflects on the applicant's management skill. The Agency agrees that management skills and financial resources are not eligibility criteria for Leaseback/Buyback and has revised § 1951.911(a) of this subpart. The County Supervisor, however, is still responsible for determining if the applicant has sufficient management skill and financial resources to meet the terms and conditions of the lease. The change has been incorporated in the rule.

Section VI.A. Exhibit J, now § 1951.911(a) of Subpart S, requires the applicant to notify FmHA of his/her intention to use a cash or credit sale if the applicant is applying for buyback.

One respondent commented that this section should be clarified to reflect that the borrower is obligated to advise FmHA of whether or not they want a cash or credit sale. The Agency has revised its notice to previous owners to advise the previous owner that the purchase may be for cash or credit sale. The revision has been adopted into the rule.

Attachment 1—"Agreement" of this paragraph sets forth conditional Agreement for leaseback. One respondent commented that this agreement should specify the estimated rental payments and advise in the conditional agreement that this rental payment may change if there is a lengthy period of time between the signing of the agreement and the final signing of the lease. The Agency did not adopt this comment because it has determined that the market rent values will not fluctuate sufficiently during the two year period and the actual rent amount must be known for the borrower to develop a plan of operation.

Attachment 3—Notice of the Availability of Leaseback/Buyback of this paragraph is used to notify the previous operator to advise him/her that he/she may have the opportunity to lease or buyback the property.

Several respondents commented that since the previous operator's priority consideration for Leaseback/Buyback is not time limited in any fashion, the previous operator's application should always take priority over a comparable application up until the time the property is leased or sold. The Agency believes that it has administrative discretion to limit the previous operator to 30 days in which to make application

for leaseback/buyback. In addition, the previous operator will have an equal oppportunity to lease or purchase the property when it becomes available for lease or sale to all eligible family farm size operators. The proposed rule is adopted.

In the proposed rule, Exhibit I, now § 1951.911(b) of Subpart S, "Farmer Programs Dwelling Retention", is changed in the final rule from "Farmer Programs Dwelling Retention" to "Homestead Protection" to conform with the title of section 614 of the Act. The program was moved from Exhibit I of this subpart to § 1951.911(b) of this subpart to combine Homestead Protection and Farmland Leaseback/Buyback in the same section of the regulation under the title of "Preservation Loan Service Programs." This improves the readability, the logical flow and the conformity of the regulations. This is a result of comments received on the readability of the regulations.

FmHA first implemented the dwelling Retention program on March 18, 1986 (51 FR 9174), 7 CFR Part 1955, Subpart B as a result of the Food Security Act of 1985. The Agricultural Credit Act of 1987 revised provisions of the 1985 bill. The major revisions are:

1. A borrower may apply and enter into an agreement to lease with an option to purchase before FmHA acquires title to farm property.
2. A borrower may apply regardless of how FmHA acquires the property. This is a change from the 1985 Act.
3. Maximum homestead acreage is increased from 5 acres to 10 acres.
4. The requirement of gross annual farm/land sales of at least $40,000 has been deleted.
5. The purchase price is the market value when an applicant exercises the option.
6. The borrower may request debt settlement for the existing balance of the FmHA debt.
7. This program applies when the primary loan service programs cannot help the borrower and FmHA has acquired the property or is about to acquire it from the borrower.

Several comments were received on the proposed rule for this program. The comments are addressed to various sections of Exhibit I of this subpart of the proposed rule.

Section III. B. Homestead Protection. One respondent commented that the requirement regarding the size of the property which the borrower could retain may conflict with existing local land use requirements. The requirement that the property will also include not more than 10 acres of adjoining land is set forth in Pub. L. 100–233, Agricultural Credit Act of 1987. Thus, the Agency cannot change this language of the proposed rule. If the minimum lot size permitted under local law is in excess of 10 acres, FmHA may not be able to lease or sell the homestead protection property to the borrower.

Section III. D. Market Value. One respondent commented that the definition of market value should be clarified to indicate that the market value will be established by an independent appraisal. This would insure that FmHA will comply with the statutory provision that establishes the market value will be the purchase price of the dwelling if the borrower wishes to purchase the property. Sections IX and XI of this Exhibit clearly identify that all appraisals will be conducted by an independent appraiser. The Agency adopts the proposed rule as amended.

Section IV. A. Determining Homestead Protection Property. One respondent commented that when a borrower informs the County Supervisor of his/her intention to participate in Homestead Protection, he/she must also inform the County Supervisor of the building and property the borrower intends to include in the Homestead Protection property. However, there are no notices that are given to the borrower which would indicate the borrower's responsibility for identifying the property which would be included in the Homestead Protection property. It was suggested that the borrower be provided a notice of this responsibility. The Agency agrees and has revised Attachment 1 to Exhibit K to Subpart S and Exhibit M to Subpart S to request the borrower to submit to FmHA, a map or other description of the buildings and property to be included in the Homestead Protection property. The agency adopts this amendment as changed.

Section IV. B. Processing Dwelling Retention Before FmHA Acquires Title. Several respondents commented that it should be made clear that anyone who applies for Primary Loan Service and Preservation Loan Service Programs by responding to the "Notice of the Availability of Loan Service Programs" should automatically be considered for Homestead Protection unless the borrower indicates that he/she does not have an interest in the program. They also felt that FmHA should consider Homestead Protection before taking action to accelerate, liquidate, accept a voluntary conveyance or foreclose on a borrower's property if the Primary Loan Service Programs would not correct the financial problems of the borrower. The Agency agrees and this paragraph has been revised to clarify that a borrower may be considered for Homestead Protection before acceleration and liquidation when it has been determined that the primary servicing options will not work. This action will depend upon receipt of the borrowers written request on Attachment 2 to Exhibit A of this subpart. The Agency adopts the amendment.

Section V. Eligibility. One respondent commented that the criteria that the gross farm income which the applicant and any spouse must have received from the farming or ranching operation be reasonably commensurate with the size and location of the farm and with local agricultural conditions. The suggestion made was that FmHA must define how the reasonably commensurate criteria will be calculated. The Agency agrees and has revised this paragraph for clarification by defining "reasonably commensurate" as relating to specific individual borrower's past gross farm income compared to farms of similar size and location. This comparison will take into account such factors as the size and location of the farm as well as well as the natural and economic conditions at the time the comparison was performed. The Agency adopts this proposed rule amendment.

One respondent commented that in this section there are references to "circumstances beyond the borrower's control." They felt that the reference here was different than the definition of "circumstances beyond the borrower's control" contained in the eligibility criteria for Primary Loan Servicing. They suggested if this was the case it should be made clear in this regulation. The Agency does agree with the comment and has revised this paragraph of Subpart S to give examples of conditions beyond the borrower's control such as illness, employment or conditions that make the dwelling uninhabitable. The Agency adopts the proposed rule as changed.

One respondent commented that the eligibility criteria that requires that the borrower must have continuously occupied the homestead property during the 6-year period preceding the calendar year in which the application is made for Homestead Protection is arbitrary. This requirement is from Pub. L. 100–233, Agricultural Credit Act of 1987. Thus, the Agency cannot change this language of the proposed rule.

One respondent commented that borrowers who applied for Homestead Protection should have to meet the same requirements as all other applicants who

desire to purchase FmHA acquired property. These people have to be creditworthy, acted in good faith, and have sufficient income to repay the loan. Those borrowers who are eligible for homestead protection must have sufficient income to make the rental payments for the term of the lease. The statute does not require that the borrower acted in good faith during the term of the previous loan; thus, the Agency cannot change this language of the proposed rule.

Section VI. Transfer of Dwelling Retention Rights. One respondent felt that this paragraph should allow for the transfer or assignment of Homestead Protection rights to other dependent members of the applicants family, besides the spouse. The reason was that there may be other dependent family members who are old enough to be able to maintain the property. The Agency does not agree as Pub. L. 100–233, Agricultural Credit Act of 1987, provides that in the case of death or incompetency of such borrowers, such rights and agreements shall be transferable only to the spouse of the borrower if the spouse agrees to comply with the terms and conditions thereof. Thus, the Agency cannot change this language of the proposed rule.

Section VIII. Property Requirements. One respondent commented that if a borrower was interested in the cancellation of the debt, that the borrower should be responsible for paying any cost relating to Homestead Protection, such as surveys, appraisals, etc. The respondent offered a suggestion that the first appraisal be paid by the FmHA as it is the seller. The Agency has determined that the costs associated with the sale of the Homestead Protection property, such as surveys, appraisals and legal descriptions necessary to define or describe the property will be paid by the Agency. The cost to the lessee, if he/she exercises the option to purchase will be the same cost that an ordinary purchaser would be required to pay. The Agency chooses to adopt the comment.

Section X. Term of the Lease and Exercising the Option. One respondent commented that it should be made clear that, if a borrower appeals FmHA's decision to terminate the lease, the termination of the lease will not take place until after all of the appeals are completed. The Agency agrees, has amended the proposed rule accordingly.

One respondent commented that this section should be clarified to indicate that borrowers who exercise their rights to priority consideration for lease or sale of the rest of the farmland under the farmland Leaseback-Buyback Program, will not be considered as interfering with the Government's efforts to lease or sell the property. The Agency agrees and has amended the proposed rule to clarify that an applicant exercising his/her rights under the Leaseback-Buyback Program will not be considered as interfering with the Government's efforts to lease or sell the property. The Agency adopts comment and has revised the rule accordingly.

One respondent commented that the term of the lease "not less than three years" was too restrictive. The respondent stated the statutory provision says that the lease term will be up to five years upon the borrower's request. Thus, the borrower should be able to enter into a lease agreement for one or two years. The Agency agrees and has revised the regulations to provide for a lease up to 5 years to be consistent with the provisions of the Agricultural Credit Act of 1987 and the terms provided for leaseback-buyback. The Agency adopts the change as proposed.

Several respondents commented that the requirements in section XI for a second appraisal is unnecessary as the Food Security Act of 1985 indicated FmHA would sell the Homestead Protection property if the price was determined by a independent appraiser done within six months of the application for Homestead Protection. The Agricultural Credit Act of 1987 provides that the borrower has the first right of refusal to reacquire the Homestead property on such terms and conditions as FmHA determines, but FmHA may not demand a payment for the property in excess of the current market value established by an independent appraiser. The Agency in the proposed rule established the concept of two appraisal to accommodate the 1987 Act as to the current market value requirement. The Agency has amended the proposed rule to require a second appraisal only if the first appraisal is more than one-year old as it will insure that the lessee will obtain the dwelling at the current market value.

One respondent commented that the lease agreement should clearly state that a borrower must notify FmHA in writing that he/she intends to exercise the option to purchase, and that he/she would like to be considered for a credit sale through FmHA. The proposed lease agreement in paragraph 9(1) sets forth the requirement that the lessee may exercise the option to purchase at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed written statement notifying FmHA that the lessee is exercising the option to purchase the property. The Agency adopts the proposed rule.

Attachment 2—Dwelling Retention Program Agreement. One respondent commented that "FmHA has commenced action to foreclose" indicates the next step is foreclosure. It was further stated that in many instances FmHA may not have actually initiated a foreclosure action when a borrower is asked to sign this agreement and this reference to foreclosure could cause a misunderstanding. The Agency agrees and has modified this paragraph to state "Borrower's FmHA loan is in default which could result in the loss of the borrower's property."

One respondent stated that where FmHA must acquire fee title to the Homestead Protection property seems to indicate that if the borrower is not liquidating all of the real estate property securing the loan but, rather, is simply conveying the part of this property which includes Homestead Protection property, they may not be eligible to obtain the Homestead Protection. It was suggested that FmHA should consider a partial liquidation which would allow the borrower to convey a portion of his/her real estate in exchange for Homestead Protection lease and service the remainder of the debt through the Primary Loan Service Programs. The Agency has amended this section by not referencing the liquidation of the farm property. The borrower may apply for Leaseback/Buyback which, if approved, would not require liquidation of the farm. The Agency will not authorize the combination of Primary and Preservation Programs. By keeping the Primary and Preservation Programs separate, it will ensure that the borrower has received the maximum write-down of the debt and also insure that if the primary programs will not assist the borrower he/she has the option of retaining the dwelling. The Agency adopts the proposed rule as revised.

One respondent commented on the rental price for the Homestead Protection property and that for a borrower who is considering voluntary conveyance, it is very important that he/she be informed up front of the lease terms as this information will have a bearing on the borrower's decision if it is to his/her advantage to enter into the voluntary conveyance in exchange for the Homestead Protection Agreement. It was suggested that FmHA determine the rental price when negotiating with the borrower prior to signing the Homestead Protection Program Agreement. The Agency agrees and has amended the

agreement to provide that the rental will be determined before the agreement is executed.

It was also pointed out by the respondent that in some instances a lengthy period of time between the signing of the Homestead Protection Agreement and the actual leasing of the property may occur and that it should be made clear that if the lease does not begin because of FmHA's inability or failure to comply with the local laws, the borrower's eligibility for Homestead Protection will not be affected. However, if under local law it is impossible to create a Homestead Protection lot with a maximum of 10 acres (i.e., local law requires a larger parcel), it will be impossible to provide the borrower with a Homestead Protection property. The Agency agrees with the comment and has amended this paragraph to provide the right for an appeal.

One respondent commented that the Homestead Protection Program is confiscatory and self-servicing on the part of the Government and that a borrower should not be required to sign away or waiver any rights that they may have in fee title and homestead exemption rights. The Agency does not agree as the Homestead Protection Program provides borrowers an opportunity to reacquire the homestead they originally pledged as security for loans. The eligibility requirements for the Homestead Protection Program are all required by law and are designed to provide borrowers with a second chance to save their homesteads if they are faced with the prospect of losing their entire farm. In addition, any State law(s) granting greater homestead rights than Federal law, will prevail. The Agency adopts the proposed rule.

Section 1951.912—Mediation. This section discusses FmHA's participation in the Mediation Program. It states that where State programs of mediation make participation voluntary on the part of creditors, FmHA's participation will also be voluntary.

Several respondents stated that this section implies that if the State program is voluntary, FmHA may, in that State determine that it simply will not participate in that State's program. The Agency did not intend to imply this interpretation and therefore has rewritten this section to clarify that FmHA will participate in mediation programs where a State has a USDA certified mediation program. However, where a State's mediation program makes participation in mediations voluntary on the part of creditors in that State, FmHA's participation will also be voluntary. Since FmHA favors the use of mediation, of course, it ordinarily will decide to participate in mediations conducted under such a program. The Agency has also incorporated other minor changes in the language to clarify how FmHA shall participate in a certified State Mediation Program.

Several respondents commented that paragraph (b), which relates to FmHA's organization of voluntary meetings between the borrower and creditors, be clarified to show that FmHA is willing to make some adjustments in its payment schedule and is not simply expecting the other creditors to make such concessions. The Agency agrees with this comment and has incorporated changes for clarification, along with other additions and minor changes in language, in the interim rule.

Paragraph (b)(3) states that the State Director will appoint an FmHA employee not previously involved in servicing of the borrower's account to participate in the meeting with creditors.

One respondent commented that the notice sent to the borrower advising them of the date of the meeting should state that the borrower has an opportunity to request someone other than the County Supervisor to represent FmHA at the meeting. The Agency agrees and has incorporated this in the rule.

Several respondents commented that FmHA should make it clear in paragraph (b)(4) that whenever the net recovery to FmHA will be greater using the write down than to go through foreclosure, that FmHA will continue to use the write down regardless of the actions of the other creditors. The Agency has incorporated this, along with other minor additions.

Paragraph (b)(5) relates to agreements reached at the "meeting of creditors."

One respondent commented that it is important to obtain the borrower's written signature on the agreement as well as the other creditors, demonstrating that all parties are in actual agreement. The Agency agrees and has incorporated this comment.

One respondent recommended that a paragraph be developed in this section requiring State Directors to develop a State supplement that describes how FmHA will participate in its State Mediation Program. The respondent stated that all of the various State Mediation Programs are substantially different. This suggestion has been incorporated and also, a paragraph has been added to clarify the duties of the representative at the meeting of creditors when there is no certified State Agricultural Mediation Program.

The rule has also been revised to suggest that State Directors use a mediator in the meeting of creditors when qualified mediations are available.

Section 1951.914—Servicing approved primary loan service program. This section states the terms and conditions with which FmHA loan notes may be consolidated, rescheduled or reamortized during the Shared Appreciation Agreement period.

One respondent commented that FmHA will be in violation of statutory intent if it does not make consolidation, rescheduling and reamortization available to the borrower again before it takes action on a delinquency that develops during the shared appreciation period. The proposed rule states that FmHA will not consolidate, reschedule or reamortize loans during the shared appreciation period. The Agency agrees with the respondent and has incorporated the comment with other minor changes to permit such actions during the shared appreciation agreement period and has entitled this section "Servicing Primary Loan Service Programs."

Paragraph (d)(1) provides for the borrower to pick an appraiser from the list of three provided by FmHA to do the appraisal at the time the recapture will take place.

One respondent commented that since the borrower and FmHA will share in the cost of the appraisal at the end of the recapture period, it is important that the appraisal be done only if it is absolutely necessary. If the recapture will take place as a result of conveyance by the borrower and an appraisal is done along with the sale or conveyance, that appraisal should suffice for purposes of determining the amount of recapture.

The Agency believes that it is necessary that the appraiser who conducts an appraisal of the real estate security involving a Recapture Agreement be both qualified and independent. Since FmHA is responsible for collecting the amount due under the agreement, the appraisal must be accurate. In cases where the borrower voluntarily conveys the property to FmHA, then FmHA would complete the appraisal and the borrower would have no appraisal costs unless he/she chose to have an approved independent appraiser complete an appraisal at the borrower's expense. The proposed rule is adopted with no change.

Paragraph (d)(2) relates to notifying the borrower of the amount due to be recaptured. This paragraph requires that the borrower pay the recapture amount within 90 days or the notice of the borrower's account will be treated as

delinquent and FmHA will proceed with collection efforts, which may include foreclosure.

Several respondents commented that the recapture calculations should be appealable, and that the borrower should receive the "Notice of the Availability of Loan Service Programs" prior to acceleration, liquidation or foreclosure. Also, the respondents commented that FmHA should make an attempt to ensure that the shared appreciation agreements alone do not force farmers off their land. FmHA should give the borrower the choice to amortize the recapture portion over the remaining life of the loan. The Agency agrees with these comments and has incorporated the changes, along with other minor changes in language.

Section 1951.916—Exception authority. This section sets forth the Administrator's authority to make an exception, on an individual case basis, to any requirement or provision of this subpart which is not consistent with the statute or other applicable law if the requirement or provision would adversely affect the Government's interest.

Two respondents commented that the exception authority leaves open the possibility of some people to receive special treatment and recommended that there be no exceptions to the rule. The Agency believes that it is necessary that such authority be available. In a rule of this magnitude, all situations are seldom covered. An exception authority is necessary to effectively administer the program. The Agency adopts the proposed rule as modified to clarify that the exception authority may also cover omissions in the regulations and address situations such as where the immediate health and/or safety of tenants or the community are endangered.

Section 1951.917 FmHA Debt Restructuring Support Teams (DRST). This section has been added to provide State debt restructuring support teams to be deployed in States when unusually large number of Primary and/or Preservation Loan Service Program applications are received. State Debt Restructuring Support Teams (DRST) will consist of a team leader and team members, selected by the State Director. This section has also incorporated provisions for National Office DRST team leaders to assist State Directors in training of personnel and organizing the processing of debt restructuring activities. The Agency has added this section to assure that when unusually large numbers of Primary and Preservation Loan Service Program applications are received that adequate personnel are assigned to assist in rendering prompt service to farmers in serious financial difficulty.

Section 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT). This section has been added providing for State Debt Restructuring Assessment Teams (DRAT) in order to monitor Primary and Preservation Loan Service Program processing. State Directors are required to deploy DRATs on a continuing basis to areas having unusually large numbers of Primary and Preservation Loan Service Program activity. The teams will monitor debt restructuring processing activities in order to minimize loan servicing errors, especially in determining eligibility and calculating net recovery value and debt write-down. The Agency has added this section to assure that problems are found and appropriate corrective action is promptly taken. State Director team leader reports will be monitored by the Assistant Administrator for Farmers Programs.

Exhibits and Attachments. The proposed rule has numerous Exhibits and Attachments for communicating with borrowers. These are identified as Exhibit A with Attachments 1 through 10, include detailed information on the availability of Primary and Preservation Loan Service Programs. They also provide detailed explanations of the forms used and deadline and procedures involved in applying for assistance under the debt restructuring provisions of the Agricultural Credit Act of 1987.

As required by the Agricultural Credit Act of 1987 (Act) some of these notices will be sent to borrowers who received the notices involved in *Coleman* v. *Lyng*, 663 F. Supp. 1315 (D.N.D. 1987). Both the Government and *Coleman* Plaintiffs have appealed *Coleman* to the Eighth Circuit. The Government sought an expedited hearing in *Coleman* because it believes that the Agricultural Credit Act of 1987 (Act) moots the June 2 injunction and certain elements of the May 7 decision. Recently, the Eighth Circuit denied an expedited hearing and set a hearing date of September 19, 1988. However, section 624 of the Act requires that final rules be implemented within 150 days after January 6, 1988, the effective date of the Act.

Several provisions of the Act require that borrowers who received the notices involved in *Coleman* also receive the new notices. The Agency has attempted to resolve these complexities within the rulemaking process. The *Coleman* decision found that FmHA must give a separate election of options for each loan accelerated and for each reason for the proposed adverse action. However, the Court based this requirement on its analysis that FmHA's previously used Form FmHA 1924–26 (Borrower Acknowledgement of Notice of Intent to Take Adverse Action) required borrowers to make a binding election of one type of option on Form FmHA 1924–26, the response form to Form FmHA 1924–25 (Notice of Intent to Take Adverse Action). However, because such a binding election of options is now prohibited by section 331D(b)(2) of the Consolidated Farm and Rural Development Act, as amended by section 605(b)(2) of the Agricultural Credit Act of 1987, these rules do not require borrowers to select among the options offered.

The process used by these interim rules is a sequential one. All borrowers who are 180 days delinquent or who have been accelerated (but not thereafter foreclosed or liquidated) will receive Exhibit A with Attachments 1 and 2 of this subpart. These notices inform borrowers that their payments to FmHA are seriously behind schedule. As required by section 605 of the Act, the notices also provide a summary of all primary loan service programs and preservation loan service programs, copies of the forms needed to apply, advice on how to get copies of the FmHA regulations, and a description of the FmHA appeal process. The May 7 *Coleman* decision ordered FmHA to prepare a similar, but less comprehensive, summary of servicing options which would be available to borrowers upon their request. The *Coleman* summary was intended to supplement the notice forms and provide enough information for borrowers to make a choice between the options offered. As mentioned above, these interim rules do not require or permit a binding choice between the options. Attachment 1 of Exhibit A of this subpart contains the summary required by the Act. In these interim rules, FmHA has considered and substantially adopted the summary prepared by the *Coleman* Plaintiffs.

However, the Act also requires that the summary contained in the new notices offered additional options which were not in existence at the time of *Coleman* (e.g., debt write-down). The preservation loan service options which were expanded by the Agricultural Credit Act of 1987 were not part of the *Coleman* case. Borrowers who receive Exhibit A and Attachments 1 and 2 will be considered for all the primary and preservation loan service options if they return Attachment 2 of Exhibit A of this subpart within 45 days of their receipt of these notices.

Certain other *Coleman* borrowers and borrowers with new defaults will be

sent different notices. Borrowers who converted FmHA security, borrowers who are 180 days delinquent and also converted FmHA security, or borrowers who have violated their nonmonetary agreements with FmHA will receive Attachments 1, 3 and 4 of Exhibit A of this subpart. These notices describe the borrower's defaults with FmHA. However, they also offer the borrower the opportunity for a meeting with FmHA, a hearing and the opportunity to apply for servicing. To comply with the *Coleman* orders and section 605 of the Act, these borrowers also do not have a choose among the options offered. As noted by the *Coleman* Court, there may be more than one loan involved and/or more than one reason for default. The *Coleman* Court concluded that the notices in this situation required a choice by borrowers between servicing or appeals. In the Court's view, while borrowers who chose servicing would also get appeals, borrowers who chose appeals would not get servicing. Under these interim rules all borrowers will clearly have the option of remedying or appealing an alleged conversion of security property by requesting a meeting or a hearing, at the same time as they have the option of requesting servicing to correct their delinquency. To pursue these options, these borrowers must simply return Attachment 4 after checking the appropriate item or items.

All *Coleman* borrowers and other borrowers who apply for servicing but are rejected will receive Attachments 5 and 6. These notices inform them of FmHA's servicing calculations and the reasons why FmHA is rejecting their servicing request. These notices inform borrowers that FmHA intends to foreclose their accounts because it believes they cannot develop a feasible plan or do not qualify for servicing options. Unlike Form FmHA 1924–26, Attachment 6 does not require borrowers to make a binding choice between the options. Rather, Attachment 6 offers these borrowers the opportunity for a meeting *and* a hearing, and the opportunity to pursue preservation loan service options. Certain of these borrowers may also purchase the property at a reduced value. However, borrowers are permitted to choose *one or more of these options*. Like the other notices of the subpart, the notice does not require a binding election of options. Of equal importance the notices are clear and readable. In Attachments 5 and 6, FmHA has adopted the format and a substantial amount of the language suggested by the *Coleman* Plaintiffs.

Attachments 7, 8, 9, and 10 may also be issued to *Coleman* borrowers and other borrowers who do not respond to the servicing notices within the required time. Attachments 7 and 8 continue the accelerations of borrowers who have not applied for servicing. Attachments 9 and 10 are notices which propose to accelerate or continue the acceleration of borrowers who reject FmHA's offer to restructure their debts. Attachments 9 and 10 provide hearing rights in this situation. These notices are also issued to nonaccelerated borrowers who have not applied for servicing, and offers them the opportunity to appeal the alleged defaults.

These notices (Attachments 1–10 of Exhibit A of this subpart) are published with these interim rules. They comply with the *Coleman* decisions to the extent allowed by the Agricultural Credit Act of 1987 and are required by law to be issued. FmHA will eliminate Forms FmHA 1924–14, 1924–25 and 1924–26 involved in the *Coleman* case. Instead the Agency will use Exhibit A and Attachments 1–10 for each instance of default. The borrower will receive one, or at the most three, sets of notices with Exhibit A. The number of notices is determined by whether the borrower applies for servicing and qualifies for servicing and accepts FmHA's restructuring offer. In implementing these interim rules, the Agency is complying with the intent of Congress which stated it would be resolving the *Coleman* litigation by enacting the Agricultural Credit Act of 1987.

Several respondents commented on the number and readability of the notices. One respondent did an in-depth, highly detailed analysis of the language and organization of the various notices. This respondent also hired a readability expert who found the proposed notices short on clarity and general design. The respondent redesigned and rewrote the notices in a form that the Agency will use with certain modifications so they can apply to more borrowers. These comments were also supported by several other farm groups and State officials throughout the Midwest farm belt. Specifically, the revised forms include Exhibit A and Attachments 1, 2, 5 and 6.

Exhibit A—Attachments 1 and 2 have been written so that they are readable and understandable to the FmHA borrower.

Exhibit A—Attachments 3 and 3A have been deleted. These notifications were to be used in cases where borrowers' FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who did not request debt restructuring and release of normal farm income.

Several respondents commented that there should be no need for this Notice provision since the statutory language requires all borrowers at lease 180-days delinquent to receive "Notice of the Availability of Loan Service Programs." It was not the intent to exclude these borrowers as they would have received the Notice because they are at least 180 days delinquent. The Agency agrees and has deleted these exhibits.

Exhibit A—Attachments 3 and 4 in the interim rule are notices sent to borrowers with non-monetary defaults, non-monetary defaults with monetary defaults and when a prior lienholder or junior lienholder is foreclosing. This Notice advises the borrower that FmHA intends to accelerate their FmHA loan accounts because of unapproved disposition of security property; they have stopped farming; or have violated other provisions of their loan agreements with FmHA. These borrowers also will receive Attachment 1 of Exhibt A, "Primary and Preservation Loan Service Programs," and are told they can apply for them by returning Attachment 4 within 45 days of their receipt of the notices.

Several respondents commented that certain paragraphs need to be clarified to make it easier for the borrower to understand what allegations may be *contested* and/or appealed if the situation is not resolved during a meeting with FmHA officials. The Agency agrees and has incorporated the clarification. Also, Exhibit A—Attachment 6, "Response to Notice of Intent to Accelerate or Continue Acceleration and Notice of Borrower's Rights," has been changed to clarify that the borrower is requesting consideration for all Primary and Preservation Loan Service Programs, including Loan Deferral and Debt Write-Down when the borrower responds to Exhibit A—Attachments 5. Exhibit A—Attachments 5 and 6 have been redesignated Exhibit A—Attachments 3 and 4 respectively.

Exhibit A—Attachment 5, "Notice of Intent to Accelerate or Continue Acceleration and Notice of your Rights" is used to notify borrowers of their right to meet with FmHA officials; to pay FmHA the net recovery value of the collateral; to request voluntary conveyance of the collateral to FmHA and/or advise the borrower of their Preservation Loan Service Program rights and appeal rights, when a feasible plan cannot be developed or the borrower is ineligible for primary loan servicing for other reasons. Attachment

6 of Exhibit A is used by the borrower to respond to Attachment 5 of Exhibit A.

Several respondents' comments provided some clarification language to reflect when FmHA has determined that a feasible plan of operation cannot be developed using all combination of Primary Loan Service Programs, including the Softwood Timber Program, and Conservation Easement Program. Also, the Attachment has been retitled and restructured to provide a dual notification for both borrowers with accelerated and non-accelerated FmHA farmer program accounts. Attachments 7 and 8 of Exhibit A have been designated as Attachments 5 and 6 of Exhibit A along with changes in language style for clarity and readability.

Attachment 7 of Exhibit A has been retitled and changed to be used to notify borrowers of their rights, whose FmHA loan accounts have been accelerated, fail to respond to Attachment 1 of Exhibit A. Attachment 8 of Exhibit A is used by the borrower to respond to Attachment 7 of Exhibit A.

Exhibit A—Attachment 9, is being modified to notify borrowers who do not apply for or reject FmHA's offer for Primary Loan Service Programs. Attachment 10, "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," will be used by the borrower to respond to Attachment 9 of Exhibit A.

Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture," has been changed for administrative purposes for capturing and reporting information on loans written-down with other changes in language.

Exhibit C, "Equity Recapture Agreement," has been retitled as "Net Recovery Buy Out Agreement," to clarify its use for recapturing the difference between the net recovery value and market value of the collateral when sold by the borrower within 2 years of purchase by the borrower at net recovery value. The language of the Exhibit has been clarified to state that the new mortgage or deed of trust will be released 2 years from the date of the recapture agreement if the borrower does not sell or convey the property. This change was made after considering a comment that the Agency is required to release the security instrument after the 2 year period.

Exhibit D, "Shared Appreciation Agreement," has been adopted along with other minor changes in language.

Exhibit E, "Notification of Request for Mediation or Meeting of Creditors," has been amended to state why the borrower is unable to develop a feasible Farm and Home Plan and why other creditors may need to adjust the borrower's debt in order for the borrower to qualify for Primary Loan Service Programs. Other minor changes in language have been made.

Exhibit F, "Notification of Offer to Restructure Debt," has been amended to clarify that the borrower may accept the FmHA restructuring offer not later than 45-days from receipt of the Notice. Also, Attachment 1, "Acceptance of Offer to Restructure My Debt," has been added to provide a response form for borrowers who are accepting an offer to restructure debt.

Exhibit G, "Deferral, Reamortization, and Reclassification of Distressed Farmer Program Loans for Softwood Timber Production Loans," that provides eligibility guidelines and processing procedures has been amended to state that accurately accounting for sale of security means that the borrower has complied with the reporting and accounting requirements. This change along with other minor changes in language and additions has been made.

Exhibit H, Primary Loan Service Programs Farm Debt Restructuring Conservation Set-Aside Easement), sets forth the process for determining the amount of loan that is to be written off in exchange for the conservation easement.

The major points are as follows:

*Major Points*I. The land must be suitable for conservation, recreation and/or wildlife habitat purposes and secures an FmHA loan that was closed before December 23, 1985.

II. The land must be wetland, wildlife habitat, highly erodible or environmentally important upland that, except for wetland and wildlife habitat, was row cropped for the three years prior to December 23, 1985.

III. FmHA may reduce the debt in exchange for an easement on a portion of the farm.

IV. An easement review term will review each site and make a report to FmHA.

V. The term of the easement must be for a minimum of 50 years.

VI. An enforcement authority will assure that the purpose of the easement is accomplished.

VII. The easement land cannot be used for agricultural purposes during the term of the easement. However, if the land is in the Conservation Reserve Program (CRP) prior to being used for easement purposes, the CRP contract will continue but the farmer will not collect the CRP payments.

The title of the program is shortened for clarity and ease of use by eliminating the word, "Set-Aside".

Paragraph I. General. One respondent suggested that "wildlife habitat" be added as a purpose for a conservation easement. The Agency adopts this suggestion. Several comments were received suggesting that Conservation Easement be considered before write-down, as a Primary Service Program and that they not be considered in the net recovery determination.

The Agency adopts the suggestion that Conservation Easements not be considered in the net recovery determination. A Conservation Easement will be considered before write down, it the borrower submits the appropriate form and the conservation easement enables the borrower to develop a feasible plan. FmHA's "Primary and Preservation Loan Service Programs," which is Attachment 1 of Exhibit A of this subpart, tells borrowers how to apply for a conservation easement. Attachment 1 explains that borrowers wanting to apply for a conservation easement must submit an Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm showing the approximate number of acres for the conservation easement and return it with Attachment 2 of Exhibit A of this subpart within 45 days of receiving Attachment 1. If the borrower does not apply for a conservation easement at this time, the borrower will be considered for conservation easement if debt write-down does not produce a feasible plan to determine whether a conservation easement when combined with debt write-down will produce a feasible plan.

This method of processing is consistent with FmHA's general servicing policy which is to keep borrowers on the farm and avoid losses to the Govrnment. The mandate requires FmHA to use the least costly servicing options short of write-down (which now is defined to include conservation easements) *if* these options allow the borrower to develop a feasible plan of operation. The policy is explained in the § 1951.902 of the prosposed and interim rules. See also 53 FR 18395 (May 23, 1988) in the preamble of the proposed rules for additional discussion of the policy. The policy received no adverse comments except as to the order of processing for conservation easements. The Agency has attempted to clarify the processing of conservation easements as explained above. Borrowers have the opportunity to be considered for a conservation easement both before and after debt-write down. If FmHA rejects a borrower's request for a conservation easement (or any other primary loan

servicing option), the borrower will have the opportunity to appeal the adverse decision.

Paragraph I (d). A respondent suggested that the definition of wildlife habitat be expanded to include wetlands and waters which adjoin a borrower's farm.

The agency does not adopt this suggestion because there is no statutory authority to take easements on properties other than from FmHA borrowers.

One respondent suggested that the definition of "upland" in paragraph (1)(c) be expanded to areas that are contributing to nonpoint source pollution of surface or ground water.

The Agency believes this suggestion goes beyond the intent of the statute, therefore, it will not be adopted.

Paragraph III. Establishing Easement Review Team. One respondent requested that Conservation Districts be authorized to serve on the Easement Review Team to help insure local community input.

The Agency adopts the suggestion.

Paragraph IV. Responsibilities of the Easement Review Team. One respondent recommended that the rights and restrictions that accrue to the holder of the easement, such as the right to permit public access to hunt and fish on easement land, be clarified. All rights and restrictions relating to the easement are set forth in the easement forms, Form FmHA 1951–39 and FmHA 1951–39A, in accordance with the Easement Review Team recommendations on an individual case basis. These Forms are available in any FmHA office. Public access to hunt and fish on easement land or other rights would have to be determined on an individual case basis by the easement review team; therefore, the recommendation is not adopted.

Paragraph VI. Terms of Easements. Several respondents suggested that farming be authorized on easement land while one large conservation organization recommended that the borrower not crop easement land.

The Agency believes that the intent of the statute is to remove land from farming by placing it into conservation, recreation and wildlife uses. Except for wetland and wildlife habitats, the statute requires that such land had to have been row cropped for 3 years prior to December 23, 1985; therefore, we are not adopting this suggestion.

One respondent stated that the term of the easement should be in perpetuity rather than a minimum of 50 years.

The existing regulation provides for perpetual easements under certain conditions. The Agency believes the elimination of the 50-year minimum easement term would be contrary to the intent of the statute.

Paragraph VII. Determining the Amount of Farmer Program Debt That can be Cancelled. One respondent suggested that the amount of debt forgiveness not be limited to the value of the land held as collateral.

Section 349(e) of the CONACT limits the amount of debt foregiveness to not more than the value of the easement land or the difference between the debt and value of the easement land, whichever is greater. Therefore, the Agency does not adopt the suggestion.

Several respondents stated that the proposed method used to calculate the amount of debt to be cancelled is incorrect.

The Agency believes its method for calculating the amount of debt to be cancelled is correct. The respondents do not consider the statutory requirment limiting the value of the easement land and the easement debt to an amount that is not in excess to the value of the easement land. Also, the respondents incorrectly interpreted the difference between the debt and value of the land to mean the total farm debt and total land value rather than the difference between the debt against the easement land and value of the easement land. Therefore, the request for a change is not adopted.

A respondent stated that the reference to paragraph (VI) found in paragraph VII B should be changed to paragraph (VII).

The Agency agrees and adopts this suggestion.

Two respondents suggested that the borrower should pay the cost of title searches, surveys, recording fees, etc.

The Agency elects to pay such costs to encourage the use of conservation easements and to assist borrowers who are unable to repay their FmHA loans without the easement to remain in farming. This suggested change is not adopted.

Paragraph VIII. Violation of Terms and Conditions. Two respondents suggested that the FmHA borrower be responsible for all costs incurred by the enforcement authority. The suggestion is adopted.

Paragraph IX. Responsibilities of the Enforcement Authority. Two respondents recommended that FmHA assign its rights and interests as the holder of the easement to the Enforcement Authority.

The Agency will not adopt these recommendations because the statute does not provide authority for the Secretary of Agriculture to assign its interest as the holder of the easement.

Exhibit I, "Farmer Program Homestead Protection," and Exhibit J, "Farmer Program Leaseback/Buyback," explained the eligibility and processing procedure in the proposed rule. Section 1951.911 of Subpart S of Part 1951 of this chapter now contains the regulations relative to the Preservation Servicing Programs.

Exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral," is to be used for determining the value of net recovery from involuntary liquidation. Exhibit J has been redesignated and titled, "Debt Loan Restructuring System (DALR$)," to be used to find the Loan Servicing Programs best suited for the borrower's farming operation, and

The Agency agrees with several respondents that commented that it is imperative that these programs and/or the instructions describing exactly how the program for making the calculations for restructuring farm loan debt be made available to the public. The new exhibits explain in detail how the software for DALR$ works and how the recovery cost will be calculated by the computer. The computer printout will indicate if the Government will gain more by continuing with borrower by providing Primary Loan Servicing or by obtaining the net recovery value through liquidation as required by the Act. The interim rule is amended to incorporate these additions.

Exhibit K, "Notice of Consideration for Preservation Loan Service Programs" and Attachment 1, "Response to Notification of Consideration for Preservation Loan Service Programs," has been added.

Several respondents commented that when borrowers respond to the "Notice of the Availability of Loan Service Programs," they should automatically be considered for all Primary Loan Servicing Programs. If they are unable to qualify for any of the Primary Loan Servicing Programs, FmHA should automatically consider them for Homestead Protection and Leaseback/Buyback.

The Agency agrees, unless the borrower responds to "Notice of the Availability of Loan Service Programs," the borrower will be considered for Preservation Loan Service Programs. Exhibit K will be used to notify borrowers that their application for Preservation Loan Service Programs will be automatically considered if they are determined not eligible for Primary Loan Service. The borrower can withdraw the application by completing Attachment 1 of Exhibit K. The rule is amended to incorporate these additions, along with minor changes in language to ensure that the Preservation Loan Servicing

consideration will occur before voluntary conveyance, acceleration, liquidation, or foreclosure.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation for Loans Secured by Real Estate and Acquisition

This subpart delegates authority and prescribes procedures for the liquidation of FmHA loans and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of the property by the Government.

Section 1955.3—Definitions. The Agency proposed to add to this section the definition of Dwelling Retention. No comments were received on this section. The Agency, however, will replace the term "Dwelling Retention" with the term "Homestead Protection" in order to be consistent with the term used in the Agricultural Credit Act of 1987. The definition is adopted as proposed except the term "Homestead Protection" replaces "Dwelling Retention."

Section 1955.10—Voluntary conveyance of real property by the borrower to the Government. The Agency proposed to delete reference to Forms FmHA 1924–25 and 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subparts S of Part 1951 of this chapter. The Agency also proposed to set forth specific guidelines for voluntary conveyance and payment of liens in accordance with § 1955.67 of Subpart B of this part.

While no comments were received specific to the proposed revision, several comments were received related to this section. One respondent commented that this section pertained only to Farmer Program loans made to an individual and should include Farmer Programs loans made to cooperative, partnership, joint operations and cooperatives. No revisions were made related to the comment because this matter is covered in the definition of "Loans to Individuals." The definition states that it includes those Farmer Program loans made to individuals or entities. One comment was received suggesting that Farmer Programs borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter should be considered for Primary and Preservation Loan Service Programs. This comment was adopted and the regulations amended to provide that when it is determined that all conditions of Subpart L of Part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent prior to acceptance of a voluntary conveyance.

One comment was received suggesting that reference in § 1955.10(d)(8) to proposed Exhibits 3, 3A and 4 of Subpart S of Part 1951 of this chapter should be deleted because of legal reasons. Subpart S of Part 1951 of this chapter has been revised deleting the proposed Exhibits 3, 3A and 4. Proposed Exhibits 5 and 6 of Subpart S of Part 1951 of this chapter have been redesignated as Exhibits 3 and 4, respectively.

One comment was received suggesting that FmHA, rather than the Office of the General Counsel, be authorized to accept less than full payments on accelerated Rural Housing (RH) Loans. This comment was not adopted because it was determined that the Office of General Counsel should recommend the necessary action on those cases referred to their office for legal action. The proposed rule is adopted in the interim final.

The Agency had administratively adopted Exhibit G, "Worksheet for Determining the Recovery Value of Farmer Program Real Estate Value," (available in any FmHA office) referred to in this section in the interim rule notice that will provide guidance to the County Supervisor in determining if it is in the Government's financial interest to accept a voluntary conveyance of real estate. This worksheet is also to be completed when determining the Government's bid at any real property foreclosure sale, and in determining if the Government will exercise its redemption rights on foreclosed property.

Section 1955.15—Foreclosure by the Government of loans secured by real estate. The Agency proposed to delete references to Forms FmHA 1924–14, 1924–25 and 1924–26, and to substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter. Section 1955.15 was also revised to clarify the handling of SFH loans, and to provide guidance for handling offers made by a borrower after acceleration. A comment was received suggesting that this section be revised to clearly indicate that a borrower who is indebted for both Single Family Housing and Farmer Program loans, would retain all rights to servicing procedures under both programs. No changes were made to this section because it was determined that this matter was adequately covered under the respective loan servicing regulations.

One respondent commented that Exhibit D, "Notice of Acceleration-Farmer Programs Loan Accounts Secured by Real Estate and/or Chattels," referred to in this section, be revised to advise the borrower that the remaining debt may be satisfied by debt settlement in conjunction with a voluntary conveyance, transfer and assumption or cash sale. This comment has been adopted and Exhibit D has been revised to advise the borrower that satisfaction of the remaining debt may be debt settled in conjunction with a cash sale of the security property, voluntary conveyance of property to FmHA and/or transfer and assumption.

One respondent commented on the provision that provided that if the borrower brings the account current after acceleration and later becomes delinquent again, the borrower will not have an opportunity to correct the default except by satisfying the debt in full. The respondent suggested that the concept of acceleration means the entire debt is due within the 30 days after the acceleration notice and if the borrower pays this amount, there is no longer any debt owed to FmHA on which the borrower could later become delinquent. The Agency agrees with the respondent that this provision is misleading and has determined that the borrower will have ample notice of FmHA's intended actions to accelerate and adequate opportunity to resolve the delinquency prior to the acceleration notice. The Agency, however, is aware that individual States may have specific State laws that require the acceleration to be terminated if the borrower cures the default. The Agency has reconsidered its proposed rule and has deleted the provision allowing the borrower to bring the account current after acceleration in the interim rule. The interim rule, however, does provide an exception for those States that have laws that specify how the debtor may receive the delinquency after acceleration by payment of less than the debt in full.

One respondent commented that after an account is accelerated, loan servicing ceases and that it was incumbent on the Agency to do everything possible to assist the borrower to continue to operate. This comment was not adopted because the Agency has determined, once an account has been accelerated, that Primary Loan Servicing Programs will not assist in the orderly collection of debt and that acceleration of the account is necessary to protect the Government's interest. The Agency has,

however, implemented that provision of the Agricultural Credit Act of 1987 which provides an opportunity for borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987, to apply for the release of income from the sale of chattel security and debt servicing relief. A few borrowers have requested release of income from the sale of chattel security and Loan Servicing Programs.

Several comments were received objecting to the provision that the denial of an offer to stop foreclosure is not appealable because it violated provisions of the Food Security Act of 1985, which requires that decisions that directly and adversely affect a borrower be appealable. No change has been made in this provision because the Agency has determined that the borrower has been given an opportunity to appeal FmHA's foreclosure action when the borrower was advised of FmHA's intent to accelerate the loan indebtedness. The Agency adopts the proposed rule.

Several respondents commented on the proposed regulation addressing the use of Supervised Bank Accounts to hold payments made on loan accounts that have been accelerated, and that Supervised Bank Accounts should be interest bearing. The Agency has considered those comments and has elected not to adopt this comment because of the differences in State Laws which may, in some cases, require the acceleration to be reversed. We have however, revised this section to clarify that payments will be accepted after acceleration and applied on the loan account unless State Laws would require the acceleration to be reversed. In those States where acceptance of payments after acceleration would cause the acceleration to be reversed, the payments will not be accepted. In addition, each State is required to address in a State supplement the provisions of State laws regarding the acceptance of payments after acceleration. In those States where accepting the payment after acceleration does not cause the acceleration to be reversed, FmHA will accept payments and apply it on the loan indebtedness.

Section 1955.18—Action required after acquisition of property. The Agency proposed changes in the section to address how and when the County Supervisor is to notify previous owners and operators of Homestead Protection rights. A respondent commented that this section should clearly state that the Homestead Protection Notice be sent certified mail. This comment has been adopted. One respondent also commented that the decision to lease or buy the property is the former owner's option, and that any decision by FmHA regarding the availability of the property for sale should not delay sending the notices, thus prohibiting a lease or purchase agreement to be entered into by the former owner within the 180-day period after FmHA acquires the property. We have revised this section to clarify that the leaseback/buyback notices will be sent after FmHA acquires the property and that the County Supervisor will initially attempt to dispose of property in accordance with the leaseback/buyback program. Appropriate changes and revisions have also been made to § 1951.911(a) of Subpart S of Part 1951 of this chapter, "Leaseback/Buyback." Section 1951.911(a) allows the former owner the option to lease or purchase the property. This section also advises the County Supervisor to notify the former owner of leaseback/buyback rights within 30 days of FmHA acquisition of the property.

It also provides for 180 days or a longer period of applicable State Redemption laws provide for a longer timeframe to make application in writing. The 180 day timeframe in which the former owner must enter into a lease or purchase agreement has been removed. There were other respondents who requested minor changes to Subpart A of Part 1955 as to grammar and clarification of phrases which the Agency has adopted and has amended this subpart to reflect these changes, otherwise the proposed rule is adopted as proposed.

PART 1955—PROPERTY MANAGEMENT

Subpart B—Management of Property

This subpart prescribes the policy and procedures for the management of real and chattel property which is in FmHA inventory. This subpart along with Subpart C of Part 1955 contained the policy and procedures for FmHA's Leaseback/Buyback and Homestead Protection Programs as mandated by the Food Security Act of 1985. The Agricultural Credit Act of 1987 revised these programs and they became a part of Preservation Loan Service Programs as outlined in Exhibit I, "Dwelling Retention," and Exhibit J, "Leaseback/Buyback," of proposed rule of Subpart S of Part 1951 of this chapter. In the interim rule of Subpart S of Part 1951 of this chapter, the Agency has deleted proposed Exhibits I and J and has incorporated the policy and procedures for Leaseback/Buyback in § 1951.911(a) of Subpart S of Part 1951 of this chapter and Homestead Protection (formerly referred to as Dwelling Retention) in § 1951.911(b) of Subpart S of Part 1951 of this chapter.

In addition to the proposed rule published May 23, 1988 (53 FR 18392), as it relates to Farmer Programs loans in this subpart, the Agency published a proposed rule on April 2, 1988 (52 FR 10577), as it relates to FmHA's Housing Programs. The April 2, 1988, proposed rule was adopted as a final rule on July 25, 1988 (53 FR 27819). A number of proposed revisions as it relates to form numbers, reference changes, titled and/or clarity were published in both proposed rules. The Agency has adopted those proposed revisions that were duplicated in the April 2, 1988, and May 23, 1988, proposed rules, in the final dated July 25, 1988 (53 FR 27819). No adverse comment were received on the May 23, 1988, proposed rule related to these revisions. Since no adverse comments were received and the revisions have already been published in final rule, no specific mention will be made related to those revisions in this interim rule, and they are not published here. The comments on this Subpart are discussed as they apply to the specific section.

Section 1955.53—Definitions. The Agency proposed to revise this section by adding or revising the definition of Indian Reservation, socially disadvantaged individual, and suitable property. Several respondents commented that the revised definition of suitable property for farm property is too restrictive and that the suitability classification of property should not be determined on whether or not FmHA could make a loan on the property. The Agency agrees with the suggestion and has revised its definition of suitable property for farm property to specifically state it is those farmland properties that can be used for general farming purposes. If the County Committee determines that the farmland can be used for farming purposes, it will be classified suitable.

Several respondents also commented on the definition of surplus property as it relates to suitable CONACT property which is not sold within 3 years after acquisition and the concern that such property may not be available for sale as suitable property because it was withheld from market due to an adverse impact on farm real estate values or other administrative reasons. The Agency agrees with these comments and has revised this definition to allow for a period of time greater than 3 years if the property was withheld from the market because its sale may have had an

adverse impact on farm real estate values or other reasons such as statute changes and regulation revisions.

Section 1955.55—Taking abandoned real or chattel property into inventory and related actions. The Agency proposed to revise this section to delete reference to Forms FmHA 1924–14, 1924–25 and 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter. One respondent suggested that this section be revised to clarify that Attachments 1 and 2 of Exhibit A be provided to the borrower before any adverse action which includes requests for voluntary conveyance. The Agency believes this issue is properly addressed in Subpart S of Part 1951 and Subpart A of Part 1955 of this chapter and no change will be made to this section.

Section 1955.63—Suitability Determination. The Agency proposed in this section to require the County Committee to determine the suitability of farmland and remove this authority from the County Supervisor. Also, this section was revised to establish guidelines for subdividing properties larger than family farm size. Other proposed revisions were made to this section to correct a reference to FmHA Instruction 2024–A (available in any FmHA office) and to delete the reference to Multiple Family Housing (MFH). One respondent suggested that guidance be provided in reclassifying property as surplus because of physical damage that occurs or changes in economic conditions that affect the suitability for program purposes. The Agency agrees with this recommendation and has revised this section providing several examples of physical damage and changes in economic conditions which will affect the suitability of the property. One respondent commented that this section provides no guidance to the County Committee on reclassifying property presently in FmHA's inventory. No change is being made in this section to address this issue because it is the intention of the agency to implement the reclassification of property presently in inventory by Administrative Notice (AN) (available in any FmHA office). Guidance will be provided by the AN instructing the County Committee to reclassify property presently in inventory in accordance with the suitability definition of this subpart.

One respondent suggested that when FmHA is subdiving farm property which has been determined to be larger than a family farm size, that the Agency divide the property into units for which the value does not exceed $200,000, the insured farm ownership loan limit. The Agency had proposed that the value of the subdivided parcel not to exceed $300,000, the guarantee farm ownership loan limit. We agree with the recommendation and have adopted the $200,000 value for subdividing property.

One respondent commented that the Agency clarify when FmHA acquires farm property and it is determined to be larger than family farm size, the previous owner has priority to purchase the entire farm. No changes have been made to adopt this revision because this matter is addressed in § 1951.911(a) of Subpart S of Part 1951 of this chapter which provides that it is FmHA policy not to subdivide property larger than family farm size until the previous owner, spouse and children of the previous owner entity members (if the previous owner was an entity) and the previous operator's rights have expired.

Section 1955.64—Securing, maintaining, and repairing inventory property. The Agency proposed to revise this section to provide for repairs to nonessential farm buildings or facilities if they are historic or if a health or safety problem exists, to clarify what the County Supervisor's responsibilities are and what FmHA will request of the Soil Conservation Service when dealing with highly erodible soil on farm property. An additional proposed revision was to change the reference from FmHA Instruction 1955–D to FmHA Instruction 2024–A (available in any FmHA office).

No comments were received regarding these revisions and the Agency adopts the proposed rule as amended.

Section 1955.66—Lease of real property. The Agency proposed in this section to clarify the leasing of real property, address Homestead Protection and Leaseback/Buyback programs, establish guidance for racial and ethnic considerations, clarify leasing priority, establish procedures for Leaseback/Buyback of property within an Indian Reservation and that the purchase price of inventory property will be the lower of its market value or the capitalization value.

Several respondents commented that the failure to meet all scheduled loan payments in the past should not be a reflection of management skills which may make a prospective lessee ineligible to lease with an option to purchase the farm. The Agency agrees that failure to meet all scheduled loan payments is not an eligibility criteria for Leaseback/Buyback. Management skills is not eligibility criteria, but the County Supervisor must take into consideration the prospective managment skills of the applicant to determine feasibility of the plan and if the terms and conditions of the lease can be fulfilled. Section 1951.911 of Subpart S of Part 1951 of this chapter sets forth the eligibility criteria for applicants that have Leaseback/Buyback rights.

Several comments were received that recommended FmHA enhance its effort to encourage minority participation in FmHA programs as it relates to leasing and purchasing FmHA inventory property. This issue is discussed in part in Subpart A of Part 1943 of this chapter. We have also revised Subpart C of Part 1955 of this chapter to address this issue by targeting suitable property for members of socially disadvantaged groups. Such property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located.

Several respondents commented that the proposed rule suggested that FmHA would transfer property to the Department of Interior only after the Agency determines that the tribe did not have financial resources to purchase the property. We agree with the respondents and have deleted from this section reference to the tribe's financial resources as a condition to transferring property to the Department of Interior.

One respondent commented that entity members of an entity that formerly owned land within the boundaries of an Indian Reservation were excluded in this section from having Leaseback/Buyback rights. The Leaseback/Buyback provisions of § 1951.911(a) of Subpart S of Part 1951 of this chapter provide priority rights to the entity and entity members regardless of whether the property is located within the boundaries of an Indian Reservation. No revisions have been made to this section since this matter is addressed in § 1951.911(a) of Subpart S of Part 1951 of this chapter.

One respondent commented that lands owned by an Indian Tribe and financed by FmHA under the Indian Land Acquisition Loan Program are entitled to Leaseback/Buyback rights and may also be transferred to the Department of Interior if acquired by FmHA. The Agency has determined that the debt write-down authority and Leaseback/Buyback rights provision of the Agricultural Credit Act of 1987 do not pertain to organization type loan borrowers, such as Indian Land Acquisition Loans and Grazing Association Loans; therefore, there is no authority to transfer property which

may be acquired as a result of an Indian Land Acquisition loan to the Department of Interior.

This comment was not adopted and no revisions were made as a result of the comment.

Several respondents commented that FmHA must offer property for sale at the value that reflects the annual production of the land as provided in the Food Security Act of 1985. The Agricultural Credit Act of 1987 provides the property be offered for sale for not less than market value. We agree with the respondent that FmHA must consider the provisions of the Food Security Act in determining the value of farm property. The value that reflects the annual production of the land is determined by FmHA by completing an appraisal based on the prospective capitalization value. FmHA has adopted this recommendation by revising the regulation to reflect that the property will be officially for sale at the lower of the capitalization value or market value.

Several comments were received suggesting that the lease term for Leaseback/Buyback should be longer than one year. We agree with the comments and have revised this section to provide for individuals and entities that have Leaseback/Buyback rights in accordance with § 1951.911 of Subpart S of Part 1951 of this chapter to lease the property for terms from one to five years. The prospective lessee will determine the term of the lease.

Several respondents commented that FmHA should maintain insurance on all inventory property to assure the previous owner will acquire the property in the same condition as when FmHA took it into inventory. FmHA, like the rest of the Federal Government, is a self insurer and it would violate long-standing Federal policy for FmHA to purchase insurance on inventory properties. The FmHA lease, Form FmHA 1955–20, contains a provision acknowledging that FmHA (lessor) does not have insurance on the property.

This comment was not adopted and no revisions were made to this section related to this comment.

PART 1955—PROPERTY MANAGEMENT

Subpart C—Disposal of Inventory

This subpart delegates authority and prescribes policies and procedures for sale of inventory property including real estate, related real estate rights, and chattels. It also covers the granting of easements and right-of-ways on inventory property.

Section 1955.102—Policy. The Agency proposed no revisions to this section, but did receive a comment that this section be clarified to insure that an eligible applicant has an opportunity to purchase suitable inventory property. The Agency has determined that there is sufficient guidance in other sections of this subpart that clarifies that eligible applicants do have an opportunity to purchase suitable inventory property. The Agency adopts the proposed rule in the interim final rule.

Section 1955.103—Definitions. The Agency proposed to revise this section to define CONACT and CONACT property, Homestead Protection, Farmer Program Loans, Leaseback/Buyback owner, previous operator and socially disadvantaged applicant and to redefine suitable property.

One respondent commented on the need for additional clarification for the definitions of "owner," by stating that in cases where the farmer is in a Chapter 11 bankruptcy and the farmer is also the trustee, that the Leaseback/Buyback and Homestead Protection rights are not rights that go to the bankruptcy estate. The Agency does not believe this definition needs clarification and adopts the proposed rule.

One respondent commented that the definition of "previous operator" should include operators who were operating the farm while it was in FmHA's inventory, even though they may have not been the same operator at the time the farm was taken into inventory. The statute requires that the Agency gives special consideration to only those operators that were the immediate previous family-size farm operators of such acquired property. All other operators, even those that might have leased the farm since it came into FmHA inventory, will have an equal opportunity to buy or lease with all other eligible applicants if the farm is not acquired under the leaseback/buyback provisions. The Agency adopts the proposed rule, along with minor changes in language and additions in the interim rule.

One respondent commented that in § 1955.106(a) that a reference should be made to the appropriate FmHA regulations for the definition of "Indian Reservation." The Agency agrees that the change is necessary and has amended this section to include the definition for "Indian Reservation." The Agency adopts this comment in this interim rule.

Several respondents commented on the definition of suitable and surplus property. The Agency's response to these comments is addressed in Subpart B of Part 1955 of this chapter. The Agency agreed with the comments and has adopted the change, along with minor changes in language and additions in the interim rule.

Section 1955.105—Real property affected (CONACT). The Agency proposed to revise this section to reference Leaseback/Buyback and Homestead Protection. No comments were received on this section, but in the interim final rule FmHA has deleted Exhibits I and J of Subpart S of Part 1951 of this chapter and moved them to § 1951.911 of Subpart S of Part 1951 of this chapter.

Section 1955.105—Real property affected (CONACT). No comments were received on this section, but in the final rule FmHA has deleted Exhibits I and J of Subpart S of Part 1951 of this chapter.

Section 1955.106—Disposition of farm property. The Agency revised this section to provide guidance on the rights of previous owner and notification provided for racial and ethnic considerations and address non-program loans. A comment was received regarding the need for a definition of Indian Reservation, and this has been added to § 1955.103 of this subpart.

Section 1955.107—Sale of suitable property (CONACT). The Agency revised this section to provide for advertising of inventory property, address the responsibility of the Indian Tribe council to notify parties eligible for Leaseback/Buyback, establishing the price for inventory property at the market value, delete reference to the capitalization value, clarify preference criteria when two or more eligible applicants wish to purchase the farm and other clarity changes.

Several respondents commented that a reference to Indian Reservation is defined in § 1955.55 of Subpart B of Part 1955 of this chapter which is in error as the definition for Indian Reservation is found in § 1955.53 of that subpart. These respondents suggested that clarification is needed for the nontraditional Indian Reservation definition as these are areas where there are not Indian Reservations but, under the State law, the Indians have the same rights as if there was a reservation. This is particularly true in Oklahoma. The Agency agrees and has adopted the comment in the interim rule for classification.

Several respondents commented that the definition of "price" in § 1955.107(c) should be amended to clarify that for suitable land the price for purchase by family farm operators can be no more than a price that reflects the annual production value of the property as a farming operation. The respondent went on to indicate that the Food Security Act of 1985 contained a prohibition against

selling land at not more than actual production value and this provision was not deleted. Thus, to be in compliance with both the Food Security Act of 1985 and the Agricultural Credit Act of 1987, which allows the offering of suitable land at market value, FmHA must offer the land at the lower of the two values. The Agency agrees and has amended this section to provide for the price of inventory farmland will be either the market or the capitalization value whichever is less.

One respondent commented that § 1955.107(d)(3) should be clarified to insure that an applicant be properly notified if the interest rate changes between the time the loan is approved and the time it is closed. Section 307 (7 U.S.C. 1927a), Loan programs, of the CONACT sets forth the requirements that the applicant must request the lower of the interest rates if the interest rates change between loan approval and loan closing. The Agency adopts this suggestion in the proposed interim rule.

One respondent commented that § 1955.107(d)(5)(i) only allows the use of a quit claim or other forms of nonwarranty deeds. The commentor suggested there is no justification for FmHA not using a warranty deed in credit sale situations. The Agency does not agree. The Anti-Deficiency Act, 31 U.S.C. 1342, prohibits a Government official from entering into a contract or obligation for the payment of money in excess of the amount available in an appropriation. A warranty deed contains covenants which, if breached, could subject the Government to contractual liability many years in the future, i.e., beyond any current appropriation. Due to the Anti-Deficiency Act, the Agency cannot adopt this suggestion.

One respondent commented that § 1955.107(e)(2) states that the County Committee will determine whether the purchaser of farmland inventory will be, as of the time after the contract or lease is entered into, an operator of not larger than a family-size farm. The respondent states that FmHA should define the definition of family-size farms. The Agency believes that the criteria set forth in the regulation provides the necessary guidance to the County Committee for determining if the inventory property is a family-size farm. Therefore, the Agency does not adopt the suggestion.

A respondent commented that the regulations should be revised to remind the County Committee that they must also comply with the priority considerations when there are two or more eligible operators. The respondent also felt that once the 190-day period has passed the previous operator of the farm had continual priority consideration over other family-size operators. The Agency does not agree that after the 190-day period that the previous operator will continue indefinitely to have priority consideration over other family-size operators. The Agency believes that the statute allows administratively that once this period of time has expired then the other factors regarding priority come into play allowing the County Committee to give priority and make a selection based on those items set forth in § 1955.107(e)(2)(i), (ii) and (iii). The Agency does not accept the suggestion and adopts the proposed rule as published.

One respondent commented that §§ 1955.107(e)(2)(iii) and 1955.108(b)(3)(i) through (iv) which would require the County Committee to take into consideration, when selecting an eligible applicant for suitable farmland property, an evaluation of the operator's past farm records. This would include liquidity, solvency, profitability and efficiency ratios. The respondent felt that this requirement would be in violation of section 621 of the Agricultural Credit Act of 1987 which would require the Agency to conduct a study to show that the use of ratios and standards as part of a loan application would not result in a portfolio of borrowers that is inconsistent with the purposes of the Consolidated Farm and Rural Development Act. The Agency agrees with this comment and has deleted the reference to liquidity, solvency, profitability, and efficiency in the interim final rule.

Section 1955.108—Sale of surplus property (CONACT). The Agency revised this section to refer to Exhibit I and J of Subpart S of Part 1951 of this chapter concerning Leaseback/Buyback and Homestead Protection and also addresses that the suitable property will be classified as surplus after 3 years. Exhibits I and J of Subpart S of Part 1951 of this chapter as proposed has been changed from exhibits and the policy and procedures for Leaseback/Buyback can now be found at § 1951.911(a) and Homestead Protection (formerly referred to as Dwelling Retention) of § 1951.911(b) of Subpart S of Part 1951 of this chapter.

One respondent commented that § 1955.108 should be amended to provide for a reference to the type of public advertising that must be done for public sale or auction sale. The respondent suggested there should be a description of the time and period for publishing advertisements in newspapers as well as for posting advertisements. The Agency agrees and has incorporated this comment in the interim rule to provide for the advertising of surplus properties twice a year for three consecutive weeks.

Section 1955.122—Method of sale (Chattel). One respondent commented that this section should clarify that in certain States the original owner of chattel property will be notified of the sale date and method of sale prior to the sales. The Agency agrees and has incorporated this comment in the interim final rule.

Section 1955.123—Sale procedures (chattel). This section provides guidance on who is authorized to approve or disapprove credit sales. No comments were received on this section. The proposed rule is adopted.

Section 1955.128—Appraisers. One respondent commented that the fee appraisers must include the market value of the property and the value determined by the annual production value. The Agency agrees and has clarified this section in the interim rule to insure that the appraisal reflects both market and capitalization values.

Section 1955.129—Business brokers. This section provides guidance on the authority to contract and use business brokers for the sale of businesses, as a whole, including goodwill and chattels. The Agency proposed no revisions to this section and no comments were received. The proposed rule is adopted.

Section 1955.130—Real estate broker. This section provides guidance on the authority to contract and use real estate brokers to sell inventory property. The Agency proposed no revisions to this section and no comments were received. The proposed rule is adopted.

Section 1955.131—Auctioneers. One respondent suggested that the commission charged by an auctioneer should be considered when calculating the recovery costs for purposes of Primary Loan Service Programs. The method of calculating recovery value is addressed in Exhibit I of Subpart S of Part 1951 of this chapter. The Agency believes this is the proper place for guidance to the field for those items which will be used in calculating recovery value. The Agency adopts the proposed rule.

Section 1955.134—Loss, damage, or existing defects in inventory real estate property. One respondent commented that § 1955.134 should be clarified to state that FmHA will maintain sufficient property insurance to insure it against damage to farmland inventory. The Agency believes the present regulations are sufficient as they provide for the reappraisal of the property, if the

property is damaged as a result of fire, vandalism, or an Act of God. The reappraised value of the property will be the amount FmHA accepts from the purchaser. Because of long standing Federal policy applicable to the entire Federal Government, FmHA does not carry property insurance on inventory property. The Agency adopts the proposed rule.

Section 1955.135—Taxes on inventory real property. One respondent commented that § 1955.135 should be amended to clarify that during the time FmHA has the land in inventory, it will pay real estate taxes when due. The respondent went on to say that it was very important that taxes be paid because of the need in rural communities for taxes to be paid to cover the expense of the public services provided by property tax dollars. The Agency believes the regulations are sufficient since they require FmHA to pay its proportionate share when the property is sold or when the tax is due. The Agency adopts the proposed rule.

Section 1955.137—Real property located in special areas or having special characteristics. The Agency revised this section to correct a reference but received numerous comments on the Agency's policy and procedures regarding floodplains, wetlands, conservation easements, highly erodible farmland and historical preservation. Several respondents commented that deed restrictions the Agency is required to place on inventory properties that have floodplains, wetlands and highly erodible farmland should not be placed on property if it is being purchased by an applicant with leaseback/buyback rights. Property subject to leaseback/buyback is inventory property and as such must be covered by these deed restrictions. The Agency has no legal authority to adopt this comment.

One respondent commented that § 1955.137(c)(3) should be clarified when the sale of inventory property will be delayed when it is necessary to have Soil Conservation Service (SCS) prepare conservation plans on the property prior to meeting the 180 or 190-day time period. The Agency agrees with the comment and the timeframe has been revised to refer only to the period of time the previous borrower/owner must make application. No revisions have been made to this section regarding this comment; however, § 1951.911 of Subpart S of Part 1951 of this chapter has been revised to delete the reference to timeframe as to when a lease or purchase agreement must be entered into. The Agency adopts the rule and has incorporated the changes, along with other minor revisions in interim final rule.

Section 1955.138—Property subject to redemption rights. The Agency proposed no changes to this section but one respondent commented that this section provided for FmHA's resale of inventory property subject to redemption rights if state law permits this. The commentor suggested that this section be amended to clarify that farmland inventory cannot be sold during the redemption period and that Leaseback/buyback rights ran consecutively. The Agency does not adopt this suggestion. The Agency has determined that it was the intent of Congress that the redemption period and Leaseback/Buyback period run concurrently. The Agency adopts the rule as proposed.

Section 1955.139—Disposition of real property rights. The Agency received numerous comments on easements, rights-of-way, development rights, restrictions or equivalent thereof on FmHA inventory property. One respondent commented that the Agency should clarify FmHA's affirmative responsibility on the placement of conservation easements. Additional guidance and clarification is added to this section as to the placement of conservation easements upon a farm when FmHA has an affirmative responsibility to do so. No other comments were adopted because the Agency has determined adequate guidance is provided. The Agency adopts the proposed rule as changed.

Section 1955.140—Scales in parcels. The Agency proposed no revisions to this section but did receive comments regarding the subdividing of farm inventory property larger than family size which are addressed in Subpart S of Part 1951 and Subpart B of Part 1955 of this chapter. To assure consistence between provisions in Subpart S of Part 1951 and Subpart B of Part 1955 of this chapter and this section, the Agency has revised this section to provide for the County Supervisor, based on recommendations of the County Committee, to subdivide farm properties determined to be larger than family-size. This section has also been revised to provide for the County Supervisor, based on the recommendations of the County Committee, to group two or more individual farm properties into one suitable farm property, along with other minor changes in language and additions in the interim rule.

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of FmHA chattel security, Economic Opportunity (EO) loan property, and note-only loans.

Section 1962.4—Definitions. This section has been revised to add the definitions of normal income security and basic security as set forth in section 611 of the Agricultural Credit Act of 1987.

Section 1962.17—Disposal of chattel security, use of proceeds and release of liens. This section states the conditions which the borrower must account for all security and provides instructions by which the County Supervisor will release FmHA's liens.

Respondents commented on the proposed regulation that in compliance with the Act, FmHA must release proceeds from the sale of crops, livestock, and livestock products so that the borrower can pay essential family living and farm operating expenses. Essential expenses are defined in § 1962.17. With regard to farm operating expenses there is a provision for machinery repair, farm building, and fence repair, etc. However, respondents stated that the proposed rule contained provisions for capital expenditures. While capital expenditures are not always essential operating expenses, they sometimes are. If a farmer has a critical piece of machinery which breaks beyond repair, it is obviously an essential expense to replace that piece of machinery. To exclude replacement of essential machinery as an essential operating expense is to ignore reality. We agree and are revising § 1962.17 (b)(2)(ii). The State Director will be authorized to approve the replacement of a piece of essential farm machinery which breaks beyond repair.

T3Section 1962.17 (b)(2)(i). One respondent requested that the existing authority to release basic security for essential family living and farm operating expenses not be deleted. Section 611 of the Agricultural Credit Act of 1987 specifically delineates the meaning of both normal income security and basic security and clearly requires that only normal income security shall be released for essential household and farm operating expenses. Therefore, we believe that Congress did not intend that basic security would be released for such purposes. The Agency does not adopt this request.

Section 1962.17 (b)(2)(ii). A respondent suggested that Exhibit E to

Subpart A of FmHA Instruction 1962–A, titled "Releasing Security Sales Proceeds and Determining 'Essential' Family Living and Farm Operating Expenses," be published. The Agency agrees and will publish Exhibit E.

Section 1962.27—Termination or satisfactory chattel security instrument. One respondent recommended the following addition to the language of § 1962.27(a)(3)(ii) as it relates to FmHA reaffirmation of a Chapter 7 bankruptcy. The following modification to the last sentence should be considered.

(ii) If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation; however, FmHA may refuse to allow the reaffirmation if the borrower has not acted in good faith pursuant to the provision of § 1951.909(a)(2).

The Agency does not agree with this comment. Congress intended the Secretary to take adverse action only in cases of proven fraud, proven waste, or proven conversion. Also, Congress did not intend to limit their intent just to bankruptcy cases.

Section 1962.34(a)(2). A respondent suggested that the interest rate charged for the transfer of a loan to an eligible borrower be the lower of the two interest rates at the time of approval or closing. The Agency cannot adopt this suggestion because section 307 (a) of the Consolidated Farm and Rural Development Act requires the borrower to choose the lower interest rate.

Section 1962.41—Sale of chattel security or EO property by borrowers. This section sets forth the procedures for voluntary liquidation of security property through public or private sale.

One respondent commented on § 1962.41(f) that this section does not include instructions on how borrowers will be notified of the release of liability. The commentor recommended the use of Form FmHA 1965–8, "Release From Personal Liability," to release the borrower of liability on a sale for less than the FmHA debt. The Agency agrees and has incorporated the change, along with minor changes in language in the interim rule.

Section 1962.47—Bankruptcy and insolvency. This section sets forth the conditions which borrowers may apply and enter into agreements for debt servicing before and after a bankruptcy dismissal.

Several respondents commented that FmHA should refuse to allow the reaffirmation of debt of borrowers dismissed in Chapter 7 bankruptcy who have not acted in good faith. The Agency believes that this is not necessary and prefers that the State Director follow the advice of the Office of General Counsel on how to handle such cases.

Interested parties should also see the Agency's response to comments concerning § 1951.907 of Subpart S of Part 1951 of this Chapter. Paragraphs (c) and (d) have been added to § 1951.907. The additions describe the servicing notices (if any) sent to the attorneys of borrowers who had bankruptcy cases pending on January 6, 1988, the effective date of the Agricultural Credit Act of 1987 and before that date. As provided in the proposed rule at § 1962.47(a)(3) and the same section of this interim rule, for bankruptcies filed after the effective date of the interim rule, FmHA will notify the attorney of these borrowers of the servicing options. The borrower will have the opportunity to apply for servicing if the requirements of this rule are met. One respondent commented that FmHA should begin processing requests for servicing so long as the borrower in bankruptcy has sought relief from the stay, but before the bankruptcy court has signed the order. Based on the comment and advice from regional legal counsel, FmHA has modified §§ 1962.47(a)(3)(i) and 1962.47(a)(3)(ii) to state that servicing negotiations can begin if the borrower provides FmHA with a filed copy of a motion requesting relief from the stay in those jurisdictions where the Office of the General Counsel (OGC) has advised FmHA that the local jurisdiction does not sign orders granting limited relief from the automatic stay. Conforming changes were also made to Exhibit D of this subpart which informs the attorneys of borrowers filing bankruptcy how to apply for servicing.

The Agency has also added changes to §§ 1962.47(c)(3) and 1962.47(c)(4)(i). The change to § 1962.47(c)(3) assures that servicing notices will be sent prior to liquidation as required by the Agricultural Credit Act of 1987. This change is the result of the advice of the Agency's legal counsel.

The change to § 1962.47(c)(4)(i) is also the result of advice from the Agency's legal counsel. Counsel advised that the Agency's previous rule concerning liquidations of Chapter 7 was inefficient. Bankruptcy Law permits a creditor to proceed prior to the discharge if the Government can obtain an agreed order from the borrower and trustee abandoning the property and relief from the stay.

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

This Subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests and certain note only cases for Farmer Program loans and nonprogram loans.

Section 1965.11—Preservation of security and protection of liens. Several respondents commented that the regulations should be revised to clarify that outstanding credit advances also include protective advances. We are revising § 1965.11(c) to read as follows:

(c) Loans may be reamortized without regard to loan limits to include protective advance. The payment of a prior lien is not a protective advance. Refer to paragraph (b) of this section for a list of protective advances. When continuation with reamortization of protective advances is recommended by the County Supervisor, the case file with documentation of all facts justifying the reamortization will be submitted to the State Director for approval.

Section 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization. This subpart sets forth the conditions for which subordination of loan security property may be granted.

One respondent commented that § 1965.12(a)(8) be changed to allow for a subordination where the prior lien plus the FmHA debt exceeds the current market value under certain conditions. The Agency believes that the proposed rule is adequate. When the FmHA indebtedness is not fully secured by the market value of the security before the transaction a subordination may be granted if the market value of the total security will be increased through improvement or acquisition by an amount at least equal to the additional advance.

Another respondent commented that the proposed rule should be revised to clarify that outstanding credit advances also include protective advances. The Agency has clarified the interim rule to state that the payment of a prior lien is not a protective advance. When continuation with reamortization of protective advances is recommended by the County Supervisor, the case file with documentation will be submitted to the State Director for approval.

Section 1965.26—Liquidation action. This section sets forth provisions for sale or transfer of security property when FmHA determines that continued

servicing of the loan will not accomplish the objectives of the loan.

Several respondents commented that § 1965.26(g)(3) be revised to correct the reference to FMI for Form FmHA 1965–8, "Release from Personnel Liability." The Agency has incorporated this change in the final rule for processing the release of liability. Also, § 1965.27(c)(1)(iii) (A), (B), and (C) has been amended by inserting "rates and" in front of the word "term" to clarify what interest rates will be charged in these cases.

Section 1965.31—Taking liens or real estate as additional security in servicing FmHA loans. Exhibit A "Memorandum of Understanding" sets forth conditions in which additional liens will not be taken for loans on marginal land used for the production of Softwood Timber loans.

One respondent commented that farm debt restructure and conservation set-aside easements should refer to "the U.S. Fish and Wildlife Service" instead of "the Bureau of Sport Fisheries and Wildlife." The Agency believes the entire Memorandum of Understanding signed in 1967 should be reviewed by FmHA and FWS and these changes be made at that time.

List of Subjects

7 CFR Part 1809

Loan programs—Agriculture, Real property-Appraisals, Rural areas.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Home improvement, Low and moderate housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—agriculture.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1809—APPRAISALS

1. The authority citation for Part 1809 is added to read as follows, and the authority citation for Subpart A is removed.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Appraisal of Farms and Leasehold Interest

2. Section 1809.1 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Land Conservation and Development (LCD) loans, Labor Housing (LH), and Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart.

* * * * *

(b) *Appraisal reports.* Form FmHA 422–1, "Appraisal Report (Farm Tract)," Form FmHA 442–3, "Map of Property," and Form FmHA 1922–11, "Appraisal for Mineral Rights," will be used in recording appraisals except as modified by Subpart A of Part 1941, Subparts A and B of Part 1943, and Subpart D of Part 1945 of this chapter, for loans of $10,000 or less. The forms will be prepared in accordance with Exhibits A, B and G of this subpart (available in any FmHA office). When applicable, Form FmHA 422–2, "Supplemental Report (Irrigation, Drainage, Levee, and Minerals)," will be prepared in conjunction with an appraisal. In no case will Form FmHA 1922–8, "Residential Appraisal Report," be used to appraise a farm under this subpart.

* * * * *

3. Section 1809.4 is amended by revising paragraph (b) to read as follows:

§ 1809.4 The three-way approach to market value.

* * * * *

(b) *Capitalization approach.* An accurate estimate of earnings capitalized at an appropriate rate determines the earnings value. This value, generally known as capitalization value, is the amount that a prudent investor likely would pay for the property based on its future earnings and advantages. The capitalization rate to be used in evaluation is most important. The County Supervisor will calculate the capitalization rate from the comparable sales used to complete the appraisal. The formula for calculating the capitalization rate is: Cap rate—Net Income/Selling Price. The following techniques can be used to find the capitalization rate:

(1) *Rental income method.* Capitalization of net rental income will translate farm rental earnings for use of land and buildings into a capitalization rate. This method will reflect one that a typical operator would adopt for the farm considering the development planned on Form FmHA 424–1. The rental income approach must be based on equitable rental terms. Studies of lease terms in each area are important to establish a fairly definite pattern of prevailing rental terms. When farm tenancy in a community is too low to determine typical rentals terms, the appraiser can use rental terms for other comparable areas with similar properties in estimating returns for ownership of land and buildings. The rental income method is preferred because rental income is not affected by the operator's management ability.

(2) *Earnings method.* The earnings method is a detailed cash flow analysis of the comparables to determine their net incomes. The net income thereby obtained will reflect the rate of return to the investment in the farm. If the exact annual income can be ascertained from the owner/operator, a more precise capitalization rate can be determined. Several determinations in this manner can provide a good indication of a reliable capitalization rate. The appraiser must use caution that capitalization rates derived in this manner reflect the typical operator and are not influenced by differences in management abilities of the operators.

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

4. The authority citation for Part 1902 continues to read as follows and the authority citation for Subpart A is removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

5. Section 1902.1 is amended by revising paragraphs (a), (i), (j), and (k) to read as follows:

§ 1902.1 General.

* * * * *

(a) Forms FmHA 1940–1, "Request for Obligation of Funds," and FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," provide for obligation only, obligation and check request for the full amount of the loan or grant except for MFH, and obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use these forms are contained in the Forms Manual Insert (FMI) for the forms. Instructions for using Form FmHA 1944–51 for obligation and check request via computer terminal may also be found in the "Multiple Family Housing User Procedures." FmHA forms are available in any FmHA office.

* * * * *

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either the borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402–1, "Deposit Agreement," or the borrower, FmHA, other lenders, and the Financial Institution on Form FmHA 402–5, "Deposit Agreement (Non-FmHA Funds)."

(j) Form FmHA 402–1 provides for the deposit of funds in a supervised bank account to assume the performance of the borrower's obligation to FmHA in connection with a loan and grant.

(k) Form FmHA 402–5 will be completed when funds advanced by other lenders are deposited in a supervised bank account to assure the performance of the borrower's obligation.

* * * * *

6. Section 1902.2 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2), (a)(4), (a)(5), (a)(6), (b), (e) and the introductory text of paragraph (f) to read as follows:

§ 1902.2 Policies concerning disbursement of funds.

(a) The Automated Data Processing System (ADPS) will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in rare instances. e.g.:*

* * * * *

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. Those District and County Offices authorized to request checks by the ADPS may request more than one check at a time. If more than one check is required, a Form FmHA 440–57 or Form FmHA 1944–57 will be prepared for each check.

* * * * *

(4) Supervised bank accounts will be used only when needed as defined in paragraph (a)(6) of this section to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA and other lenders when the accounts are no longer required.

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 when the District Director or County Supervisor determines it is needed as defined in paragraph (a)(6) of this section to assure that the funds will be available for replacement of the property.

(6) When it is determined by the County Supervisor and requested or agreed to by the borrower that special supervision is needed in the management of the borrower's financial affairs, funds may be deposited in a supervised bank account. This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his/her financial affairs. Such a period will not exceed one year unless extended by the District Director.

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested through the State Office terminal. Subsequent checks will be ordered as needed through the ADPS system.

* * * * *

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," (or Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," for multiple family housing loans) in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided:

* * * * *

7. Section 1902.3 is amended by revising paragraph (b)(1) to read as follows:

§ 1902.3 Procedures to follow in fund disbursement.

* * * * *

(b) * * *

(1) "For Deposit only to Account No. (Number of Construction Account) of (*Name of Borrower*) in (*Name of Financial Institution*)."

* * * * *

8. Section 1902.14 is revised to read as follows:

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check), the original cancelled check or either a microfilm copy or other reasonable fascimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconcilation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable fascimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA has a need for the original cancelled check(s) the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s) or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) and will provide this service to the Farmers Home Administration with no fees being assessed the Agency or the Depositor's account for the service.

9. Exhibit B to Subpart A is revised to read as follows:

Exhibit B to Subpart A—United States Department of Agriculture, Farmers Home Administration—Interest-Bearing Deposit Agreement

BECAUSE Certain funds of _____ referred to as the "Depositor," are now on deposit with the _____, referred to as the "Financial Institution," under a Deposit Agreement, dated _____, 19____, providing for supervision by the United States of America, acting through the Farmers Home Administration, referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

BECAUSE certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place these funds in interest-bearing deposits with the Financial Institution:

THEREFORE, the Depositor and the Government authorize and direct the Financial Institution to place _____ Dollars ($_____) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

$_____ for a period of _____ months at _____% interest.

$_____ for a period of _____ months at _____% interest.

$_____ for a period of _____ months at _____% interest.

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this _____ day of _____, 19____.

UNITED STATES OF AMERICA

By: _____

County Supervisor
Farmers Home Administration
U.S. Department of Agriculture

_____

(Depositor)

By: _____

Title: _____

Accepted on the above terms and conditions this _____ day of _____, 19____.

_____

(Financial Institution)

_____

(Office or Branch)

By: _____

Title: _____

Exhibits C and D [Removed]

10. Exhibits C and D to Subpart A are removed.

PART 1910—GENERAL

11. The authority citation for Part 1910 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

12. Sections 1910.1 through 1910.11 are revised, §§ 1910.12 through 1910.49 are added and reserved, and § 1910.50 is added, and Exhibits A, B and C are added to Subpart A. As revised, Subpart A reads as follows:

Subpart A—Receiving and Processing Applications

Sec.

1910.1 General.
1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.
1910.3 Receiving applications.
1910.4 Processing applications.
1910.5 Evaluating applications.
1910.6 Notification of applicant.
1910.7 Counseling.
1910.8 Reaching an understanding.
1910.9 Supplemental material to be provided by State Offices.
1910.10 Preference.
1910.11 Special requirements.
1910.12 through 1910.49 [Reserved]
1910.50 OMB control number.

Exhibits to Subpart A

Exhibit A—Letter for Information Needed for a Completed Farmer Program Application
Exhibit B—Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland
Exhibit C—Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Program Loans.

Subpart A—Receiving and Processing Applications

§ 1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) and insured sections 502 and 504 Rural Housing (RH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and appropriate FmHA program regulations.

(b) Wherever the term "applicant" appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

(c) FmHA forms are available in any FmHA office.

§ 1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, natural origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as "ECOA prohibited bases." It is the policy of the Farmers Home Administration that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§ 1910.3 Receiving applications.

Applications for FmHA assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

(a) All persons applying for FmHA assistance who are not indebted to FmHA must file a written application. All persons wishing to submit an application will be encouraged to do so. No oral or written statement will be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA "prohibited bases." The filing of written applications *will be encouraged* even though funds may not be currently available, since complete applications must be considered in the date order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410–4, "Application for Rural Housing Assistance (NonFarm Tract)," will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410–1, "Application for FmHA Services," will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945–22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information from Financial Institution," to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(4) All individual loan applicants will sign Form FmHA 410–9, "Statement Required by the Privacy Act." A signed copy will remain with the application. No application is complete without a signed Form FmHA 410–9 on file.

(5) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications filed for assistance to finance residential real estate and direct FO loans when the loan is to be secured by a lien on the property. In those cases, FmHA will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(b) Requests by FmHA borrowers for additional assistance will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) RH applicants who have a current Form FmHA 431–3, "Household Financial Statement and Budget," or Form FmHA 410–4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410–4 (if other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410–4):

(i) Name.

(ii) Social Security Number.

(iii) Loan purpose.

(iv) Planned income for next 12 months.

(v) Date and signature of the application.

(3) Farmer program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410–1.

(4) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also complete Form FmHA 1945–22 in addition to the other required forms.

(c) County Office employees will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear to the applicant what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated and signed, and will give whatever assistance is necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination of surnames. Married persons may apply as individuals. In the case of a joint application for other than a farmer program loan, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as "co-applicant." For farmer program loans, there will be only one applicant. If a husband and wife insist on applying as co-applicants for a farmer program loan and the farming operation is a sole proprietorship, they will be considered a joint operation type entity as set out in FmHA loan making regulations and they both will have to meet the eligibility requirements applicable to the joint operation. County Office employees must explain to husbands and wives that they both do not need to apply for farmer program loans unless they desire to do so or the application is for an entity operation. If they apply together for a loan, it must be explained that they will be considered as a joint operation. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others, including cosigners, as required by program regulations needed to determine eligibility for the requested assistance. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment or the security requirements for the loan request. When a co-signer will be required, the applicant will be requested to identify their choice of co-signer. An applicant will also be required to provide information concerning a co-signer, spouse or former spouse, who will not be a co-signer, or who is not a member of the household, when the applicant is relying on the co-signer, alimony, child support, separate

maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases, information regarding the co-signer's, spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will not be required to sign the note unless the spouse's signature on the note is required to create a security interest or the spouse is a co-applicant. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

(f) If a spouse's signature would be necessary for FmHA to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms "married" and "separated" may be used to designate marital status. "Unmarried" includes single, divorced, or widowed persons.

(g) FmHA may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA Instructions 1905–A and 2006–J which are available in all FmHA offices.

(i) For all loans and grants, the applicant *must* furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security Number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraph (i)(3) of this section.

(1) The SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA forms.

(2) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA Instruction 2033–A, "Management of County Office Records," (available in any FmHA office).

(3) The borrower's case number for residents of the Pacific Islands will be taxpayer's identification number issued by the Pacific Islands Government.

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs" will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA 440–58, "Estimate of Settlement Costs," will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA 440–59 will be kept in the running record section of the applicant/borrower County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940–41, "Truth in Lending Disclosure Statement," completed using "good-faith" estimates, will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

(l) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of Subpart B of Part 1910 of this chapter (available in any FmHA office) will be collected from the loan applicants before credit reports are ordered, except in the case of section 504 loan applicants and section 502 Rural Housing Loan applicants whose requested loan will likely not exceed $7,500. It is the policy not to order credit reports for Rural Housing loans of $7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in § 1910.53(g) of Subpart B of Part 1910 of this chapter.

§ 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. If a farm is situated in more than one State, County or Parish, the loan will be processed in the State, County or Parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Completed RH applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except an application from a veteran will receive preference as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.

(2) Form FmHA 410–4.

(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C is available in any FmHA office).

(4) Personal contacts.

(5) Visits of supervisory personnel to the applicant's residence or business.

(6) Form FmHA 410–8, "Applicant Reference Letter," to inform sources

such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the Form FmHA 410–4.

(i) Form FmHA 410–8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410–8, the notification will read as follows:

I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Public Law 95–630 in seeking Financial information regarding

(Applicant)

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910–5, "Request for Verification of Employment." This form may be used to verify employment and income.

(8) Form FmHA 1940–20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter.

(9) Information required by § 1910.3 (a) (3) and (4).

(b) *Completed farmer program applications.* Completed applications are those set forth below. All persons requesting an application will be provided Exhibit A of this subpart. Completed applications will be processed in the date order received, except as outlined in § 1910.10 of this subpart. The filing date will be stamped on the front of the Form FmHA 410–1. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed farmer program application will consist of both applicants and FmHA's responsibilities which are as follows:

Borrowers Responsibilities

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to the farm training and/or experience of the applicant and the individual members of an entity applicant.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may not be provided by the applicant when other financial records are not available.

(6) Up to five years of production history.

(7) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(10) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter including SCS Form CPA–26, "Highly Erodible Land and Wetland Conservation Determination," Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," and Form FmHA 1940–20, as required by Subpart G of Part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(12) The requirement set forth in § 1910.3(a)(4) of this subpart.

FmHA's Responsibilities

(13) The requirement set forth in § 1910.3(a)(3)(i) of this subpart.

(14) Form FmHA 1945–29 (EM loans only).

(15) Credit reports as provided in Subparts B and C of this part.

(16) Form FmHA 410–8 as set out in § 1910.4(a)(6) of this subpart.

(17) Form FmHA 1924–1, "Development Plan," if necessary.

(18) Form FmHA 440–32, "Request for Statement of Debts and Collateral," when applicable.

(19) Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusion," or Class I or Class II assessment, whichever is applicable.

(20) Form FmHA 1945–29, "ASCS Verification of Farm Acreage, Production and Benefits," (EM loans only).

(21) Additional information may be obtained and verified by:

(i) County Office records.

(ii) Personal contacts.

(iii) Visits of supervisory personnel to the applicant's operation.

(c) *Incomplete farmer program applications.* Applicants who do not submit necessary information for complete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of Form FmHA 410–1. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(d) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after a completed application for OL, FO, SW, or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924–B–1 (available in any FmHA office) to the applicant telling the applicant about Limited Resource loans.

(e) *Notifying socially disadvantaged applicants/borrowers about the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of FmHA acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers about the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Inventory Farmland," to the applicant(s). Exhibit B will also be presented to all socially

disadvantaged individuals at the time they make their initial contact with FmHA regarding FmHA services. Socially disadvantaged applicants are defined in § 1943.4 of Subpart A of Part 1943 of this chapter.

(f) *Notifying Borrower(s) about Farmer Programs Borrower(s) Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower Exhibit C of this subpart, "Farmer Program Borrower Responsibilities" (available in any FmHA office).

(g) *Determining eligibility.* The County Committee will be used to determine eligibility of completed RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for a determination of eligibility. The County Committee will certify whether or not the applicant meets the eligibility requirements by use of Form FmHA 440–2, "County Committee Certification or Recommendation." The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions must be made by the loan approval official.

(h) *County Committee actions.* All actions by the committee regarding applicant eligibility will be taken in committee meetings attended by at least two committee members. If the County Committee is unable to reach a decision based on the information available, they may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(i) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a completed application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified in writing of the action taken not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights as provided in Subpart B of Part 1900 of this chapter. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(j) *Recording action taken.* The County Committee minutes will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be clearly stated on Form FmHA 440–2. In those cases not involving County Committee action, this information will be recorded in the running case record. In the letter to the applicant, factual justification for the unfavorable decision must be set forth as explained in § 1910.6(b) of this subpart.

(k) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a written request within 30 days that further consideration is desired. The letter to the borrower will contain the ECOA paragraph set forth in § 1910.6 (b)(1) of this subpart. Applications for RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdraw or disapproved, or unless the loan is closed. Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or non farm tracts who derive a major portion of their income from farming, will remain active for 12 months from the date a completed application is received, unless withdrawn or disapproved, or unless the loan is closed. All applications which are withdraw or rejected will be handled in accordance with § 2033.7 of FmHA Instruction 2033–A (available in any FmHA office). If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter. For those applications which have been approved but have not been funded if the funding was not available at the time the application was filed, and for which the steps outlined in § 1910.6(f) have been taken, the County Supervisor will, during the eleventh month following loan approval, notify the applicant that the application will expire 12 months from the date of loan approval. If the applicant wants the application to remain active, the applicant must provide the County Office with a written request within 30 days, requesting that the application remain active. The applications retained at the applicant's request will be extended for only one additional 12-month period. Failure of the applicant to respond will cause the application to be withdrawn.

§ 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, will not be used as a consideration of eligibility (provided the applicant the age of the applicant has reached the legal age of majority in the State, or has had the minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) *Creditworthiness.* When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history:

(1) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or FmHA delinquencies that have been resolved in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Non-payment of a debt due to circumstances beyond the applicant/

borrower's control. However, non-payment of a debt due to circumstances within an applicant/borrower's control may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section. Bankruptcies must never be used as an indication of unacceptable credit history.

(6) Previous FmHA debts settled pursuant to Subpart B of Part 1956 of this chapter and Part 1864 of this chapter (FmHA Instruction 456.1) and debts settled pursuant to Subpart B of Part 1951 of this chapter.

§ 1910.6 Notification of application.

The time frames established in § 1910.4(i) of this subpart must be met.

(a) *Favorable eligibility decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately and, for Farmer Programs, if the County Supervisor has determined the operation is feasible, will promptly process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligiblity does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supevisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original eligibility determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the applicant.

(b) *Unfavorable eligibility decision.* (1) The County Supervisor will immediately notify the applicant in writing of the unfavorable decision. A statement will be made giving specific reasons and factual basis for the denial. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of unfavorable decisions:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income is derived from any public asssistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440–2 will be completed by giving the specific reason(s) for the rejection and the factual basis in the blank space immediately above the space for signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided.

(3) If a decision is to deny an EM, OL, FO, or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing in accordance with the appeal office or court decision. The County Supervisor or the County Committee must take action within 15 days, as set out in § 1900.59(c) of Subpart B of Part 1900 of this chapter.

(c) *Favorable feasibility decision.* If the County Supervisor's decision regarding feasibility is favorable, the County Supervisor will notify the applicant immediately of this decision and will promptly process the loan in accordance with the applicable regulations.

(d) *Unfavorable feasibility decision.* For Farmer Programs loans, when the County Committee has determined the applicant eligible and the County Supervisor is unable to determine that the plan of operation is feasible, the County Supervisor will immediately notify the applicant in writing of his/her unfavorable decision. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The statement in paragraph (b) of this section will also apply to this paragraph.

(e) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(f) *Lack of funds.* Applications received when funds are not available will be processed through approval subject to the availability of funds. Applicants who are ineligible will be so advised, in accordance with paragraph (b)(1) of this section. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. This letter will be sent by certified mail, return receipt requested. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in paragraph (b)(1) of this section. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration.

(1) When funds are not available for EM, OL, FO and SW loans within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940.1, "Request for Obligation of Funds," will be executed by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments on Requirements of Certifying Official," of Form FmHA 1940–1, upon execution of the form for all insured and guaranteed farmer program loans:

This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request update eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds.

(2) The loan approval official will ask an applicant for an EM, OL, FO, or SW loan for updated information if more than 90 days has passed since Form FmHA 1940–1 was signed. If there have been any significant changes which would affect eligibility, the County Supervisor will obtain the necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. Examples of significant changes which might have occurred since the original request would be changes in the farming

operation (i.e., hogs to poultry), change in farm units and major changes in financial condition. For the County Supervisor to make this determination, a current financial statement and an updated plan of operation must be prepared. Once the applicant has provided the necessary information, a decision as to eligibility and feasibility, if needed, will be made within 30 days. If after reconsideration, the application is rejected, an unfavorable decision has occurred, and proper notification will be sent as outlined in paragraph (b)(1) of this section.

(g) *Credit report.* If a loan is refused because of information provided by a credit report, the County Supervisor will also:

(1) State the reason as being information received in the credit report and cite the specific information given in the credit report that led to the rejection (e.g., delinquent obligations, tax lien, or judgments).

(2) Provide the name and address of the credit reporting company.

(3) Inform the applicant that a copy of the Credit Report may be obtained from FmHA if requested by the applicant, but that any dispute regarding the accuracy of the information in the credit report must be resolved between the Credit Reporting Company and the applicant.

(h) *Other credit references.* When denial is based on information obtained from a source other than a Credit Reporting Company, the applicant will be advised that denial is based on information from other than a Credit Reporting Company, and that upon written request, the nature of that information will be disclosed.

(i) *Completing title work for insured Farmer Program loans.* When an insured farmer program loan(s) is approved, the following statement will be included as an approval condition under section 41 of Form FmHA 1940–1:

> If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

§1910.7 Counseling.

(a) *Budgets.* When it appears that an RH non-farm applicant has insufficient income, based on the abbreviated budget section of the application form, the County Supervisor should invite the applicant to return to the County Office to complete Form FmHA 431–3. There should be enough income to repay the requested loan, pay other debts, pay planned household and other expenses. Joint completion of the budget by the applicant and County Supervisor should provide the opportunity for the applicant to fully explain how household income is managed.

(b) *Farm and Home Plan.* When information on the Farm and Home Plan indicates that the applicant has insufficient income to repay the requested loan, pay other debts and provide a reasonable standard of living, alternative plans of farm operation will be considered to attempt to overcome the problem.

(c) *Applicant/Supervisor understanding.* When discussing the reasons for the applicant's failure to qualify, the County Supervisor will:

(1) Be sympathetic.

(2) Try to help the applicant work out the problem.

(3) Give full explanation for the rejection and provide full opportunity for further discussion.

(4) Offer suitable alternative when applicable.

(5) Discuss all FmHA programs that might assist the applicant in achieving the applicant's goals.

§ 1910.8 Reaching an understanding.

The proper understanding will be obtained with all applications with respect to the basis loan making and servicing policies, their responsibilities, and the benefits that may be expected from FmHA assistance. The applicants should be given adequate time to make all necessary basic decisions. Proper understanding may be reached with applicants through:

(a) *Individual interviews with County Office personnel.* The process of arriving at an understanding will begin on the occasion of the first interview with the applicant. The applicant will be given an attentive and sympathetic hearing with ample time to discuss fully all problems and needs. County Office personnel will explain clearly whether and how these needs may be met through the services of FmHA. If necessary, arrangements will be made for subsequent discussions until the County Supervisor is satisfied the applicant has obtained a proper understanding.

(b) *Applicant interviews with the County Committee.* An applicant requesting an opportunity to appear before the County Committee to discuss any questions relating to the application or the FmHA program will be permitted to do so.

(c) *Group meetings.* An effective method of assisting applicants to obtain a proper understanding of the FmHA program is through group meetings. Effective group meetings can be held with three or more applicants. Through group meetings applicants get the benefit of explanations given to questions raised by others. Requirements can be presented more impersonally, and generally are more acceptable when applicants know that all borrowers must meet the same requirements. Group participants will be informed that matters of personal or confidential nature will not be discussed publicly, and that any such questions will be answered during individual interviews.

(d) *Items to be discussed.* Before loans are made, County Supervisors will make every effort to see that an understanding is reached with the applicants on the following points as they apply to the type of assistance involved:

(1) Farm and Home Planning.

(2) Budgeting.

(3) Recordkeeping.

(4) FmHA visits.

(5) Analysis of income and expenses.

(6) Supervised bank accounts.

(7) Planning and performing development work.

(8) Use of funds.

(9) Security requirements.

(10) Care and maintenance of security.

(11) Accounting for security property.

(12) Repayment of loans.

(13) Interest credits and recapture.

(14) Moratorium.

(15) Graduating to other credit sources.

(16) Direct payment to the Finance Office, when applicable.

(17) Appeal procedure.

§ 1910.9 Supplemental material to be provided by State Offices.

To further assist County Supervisors receive and process applications, the State Office may supplement this subpart with materials and information adapted to State and local conditions. Examples of the types of information that can be used effectively for the guidance of the County Supervisors are:

(a) Guides and suggestions for holding group meetings of applicants.

(b) Illustrative material for use in explaining the FmHA program to individuals and groups.

(c) Information or State statutes concerning community property or dower and curtesy rights, and how these laws affect loan programs and security requirements.

(d) Outreach material.

§ 1910.10 Preference.

(a) *Veterans.* (1) Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from

the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces:

(i) During the period of April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955, or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(2) Veteran's preference will apply when:

(i) There is a shortage of funds.

(ii) Obligating forms are ready to be submitted to the Finance Office, and

(iii) There is more than one application having the same date.

(3) For Rural Housing applicants, veteran's preference will be extended to the spouses and children of deceased servicemen who died in service during one of the periods listed in paragraph (a)(1) of this section.

(b) *Farmer Program loans.* In addition to the veteran's preference, the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter applies.

§ 1910.11 Special requirements.

(a) *Servicemen's Readjustment Act of 1944.* Section 512(a)(D) of the Servicemen's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Veterans Administration (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Veterans Administration Loan Guaranty Officers may, therefore, require VA loan applicants to apply to FmHA for loan assistance.

(b) *Veterans determined ineligible by FmHA.* If the veteran is unable to obtain a loan from FmHA, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by FmHA of the veteran's application and the specific reasons for rejection.

§§ 1910.12 through 1910.49 [Reserved]

§ 1910.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0134.

Exhibits to Subpart A

Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration (insert address)

_____

(Date)

Dear _____:

Please submit the following information to this office so that your loan request can be further considered:

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If your application is for a cooperative, corporation, partnership or joint operation, you must submit the following:

(A) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(B) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operation.

(C) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(D) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors of members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to your farm training and/or experience and of the individual members of an entity applicant.

(4) Financial records for the past five years. You may submit your income tax records only if you do not have financial records.

(5) Five years of production and expense history.

(6) A brief narrative describing your proposed operation and the proposed size of the operation (New applicants only).

(7) The projected production, income and expenses, and loan repayment plan for the operation, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation which are acceptable to FmHA.

(8) Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification," which must be obtained from your local SCS office.

(9) A copy of any lease, contract, agreement, or option entered into by yourself or the entity which may be pertinent to the consideration of the application. When a written lease is not obtainable, a statement will be required setting forth the terms and conditions of the agreement between you and the landlord.

(10) Form FmHA 440–32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete Form FmHA 440–32 for each of you present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Deliver the form(s) to each of your creditors and insure that they return the completed form to our office.

(11) A legal description of your owned farm, real estate property and/or a copy of your lease, including the legal descriptions of all rented crop land, whichever is applicable.

(12) Form FmHA 1945–22, "Certification of Disaster Losses," (for emergency loan application only).

(13) Written evidence from your present lender (if you are presently farming) or other local lenders (and all lenders of an entity applicant) documenting your inability to obtain other credit, including a guaranteed loan. Copies of the lenders letter must be provided to our office.

(14) Applicant's Reference Letter List—this list may include credit references and these references must show complete address and credit account number when the reference is a credit institution.

FmHA will mail Form FmHA 410–8 letters to the references provided and they must be received back in the office before your application is considered complete.

Or

A credit report fee of $ _____ payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

(15) Form FmHA 1910–5, "Request for Verification of Employment." This will be used only if you are relying on off-farm employment to pay part of your expenses.

(16) Form FmHA 1924–1, "Development Plan."

The following FmHA forms are attached for your use in filing a complete application:

_____ Form FmHA 410–1, "Application for FmHA Services."

_____ Form FmHA 410–9, "Statement Required by the Privacy Act."

_____ Applicant Reference Letter List

_____ Form(s) FmHA 410–32, "Request for Statement of Debts and Collateral."

_____ Form(s) FmHA 1910–5, "Request for Verification of Employment," (if applicable)

_____ Form FmHA 431–2, "Farm and Home Plan."

_____ Form FmHA 1945–22, "Certification of Disaster Losses," (for EM applications only)
_____ Form FmHA 1924–1, "Development Plan," (if applicable).
_____ Form FmHA 1940–20, "Request for Environmental Information," (if applicable).
Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification." (Provided and completed by the Soil Conservation Service (SCS)).

(County Supervisor)

Exhibit B—Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland

UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION (Insert address)

Date

Dear_____:

The Farmers Home Administration (FmHA) has authority under the Agricultural Credit Act of 1987 to target direct farm ownership (FO) loan funds and acquired farmland to applicants/borrowers of socially disadvantaged groups. This program provides credit to applicants/borrowers of socially disadvantaged groups, at regular or reduced interest rates, to purchase, improve or enlarge farms. In addition, the program provides that FmHA acquired farmland be made available for sale or lease to applicants/borrowers of socially disadvantaged groups. Socially disadvantaged borrowers with existing direct FO loans may have their accounts deferred and/or reamortized at a reduced interest rate.

If you would like additional information regarding the making of direct FO loans and/or the renting or buying of FmHA acquired farmland targeted to socially disadvantaged groups, you should contact my office.

Sincerely,

County Supervisor.

Exhibit C—Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Program Loans

Note: Exhibit C, referenced in this subpart, is available in any FmHA office.

Subpart B—Credit Reports (Individual)

13a. Part 1910, Subpart B, § 1910.52 is amended by revising paragraph (b) to read as follows:

§ 1910.52 General.

* * * * *

(b) Whenever Exhibit A does not list a contractor for a particular town or area, the local FmHA official should request, through the State Director, the address of other contractors from the Director, Directives and Administrative Services Division, National Office. If the Director, Directives and Administrative Services Division, informs the State Director that there are no other contractors for that particular area, the local FmHA official should follow the procedures outlined in Exhibit A, CREDIT REPORT CONTRACTS, (a). In the meantime, § 1910.4 (a)(1), (2), (4), (5), (6), (7), (8) and (9) of Subpart A of Part 1910 of this chapter will be followed in obtaining and verifying the applicant's qualifications and credit needs.

* * * * *

13b. In Part 1910, Subpart B, Exhibits A through E are amended by removing footnote 1 in the table of contents, and revising the "Note" to the Exhibits. As revised, Exhibits A through E read as follows:

Exhibits to Subpart B

Note: The exhibits referenced in this subpart are available in any FmHA office.

Exhibit A—Credit Report Contractors, Current Prices, and Geographical Coverage
Exhibit B—Request for Factual Data Report
Exhibit C—Factual Data Report on Borrower
Exhibit D—Confidential Report on Computer Form 100
Exhibit E—Confidential Report on Computer Form 2000

PART 1924—CONSTRUCTION AND REPAIR

14. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Planning and Performing Construction and Other Development

15. Section 1924.1 is revised to read as follows:

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multi-unit (LH) loans and grants, and Rural Housing Site (RHS) loans.

16. Subpart B of Part 1924 and Exhibit A to Subpart B are revised to read as follows:

Subpart B—Management Advice to Individual Borrowers and Applicants

Sec.
1924.51 General.
1924.52 through 1924.55 [Reserved]
1924.56 Credit counseling.
1924.57 Planning.
1924.58 Recordkeeping.
1924.59 Supervision.
1924.60 Analysis.
1924.61 Nonfarm enterprises.
1924.62 State supplements.
1924.63 through 1924.70 [Reserved]
1924.71 Delinquent borrowers.
1924.72 [Reserved]
1924.73 Follow-up supervisory actions by District Directors and State Office staff.
1924.74 through 1924.99 [Reserved]
1924.100 OMB control number.
Exhibit A to Subpart B—Letter to Borrower Regarding Releases of Farm Income to Pay Family Living and Farm Operating Expenses.

Subpart B—Management Advice to Individual Borrowers and Applicants

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer program loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, joint operations, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST) loans, and/or Rural Housing loans for farm service buildings (RHF). This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection-only or a judgment account. This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7 of Subpart A of Part 1965 of this chapter). FmHA forms are available in any FmHA office.

§§ 1924.52 through 1924.55 [Reserved]

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available,

and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant.

§ 1924.57 Planning.

(a) *Long-Time plans (Form FmHA 431–1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431–2 "Farm and Home Plan," and Form FmHA 1962–1, "Agreement for the use of Proceeds/Release of Chattel Security").* These two forms will cover the production cycle which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431–2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision. FmHA will not require the use of Coordinated Financial Statements.

(1) Form FmHA 1962–1 must be completed once each year and revised as needed in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current Form FmHA 1962–1 in the file of a borrower with loans secured by chattels. Form FmHA 1962–1 should be filled out and signed at the same time as a Form FmHA 431–2 is signed, if a Form FmHA 431–2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431–2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the Form FmHA 1962–1 should show where the $10,000 will come from (Example—wheat, 3,000 bushels sold, August, $10,000, Purchase Equipment.) Form FmHA 431–2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter while any appeal is pending. This may be an interim plan for determining the release of proceeds on Form FmHA 1962–1 for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Such a plan does not have to meet the requirements of a feasible plan in paragraph (c)(5) of this section.

(v) Who have had payments deferred.

(vi) Who are making major adjustments to their operation.

(vii) Who have limited resource loans.

(viii) Who have FmHA loans secured by crops, livestock, and livestock products marketed in the regular course of business.

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431–2 and 1962–1 when a new loan, a subsequent loan, a subordination request, or a transfer and assumption is involved, the request will not be approved and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter and § 1962.17 (a)(2) of Subpart A of Part 1962 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living (see § 1924.57(c)(5)(iv) of this subpart) and farm operating expenses. These decisions will be based on sound judgment supported by the facts surrounding the request for release and fully explained to the borrower. In addition FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962–1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

(3) In certain cases the borrower may not indicate any disagreement with the planned use of proceeds on the Form FmHA 1962–1, but may refuse to sign the form. For these cases, the County Supervisor will sign the form and mail it to the borrower with a cover letter explaining that FmHA considers the document binding unless the borrower disagrees with the planned use of proceeds and wishes to appeal in accordance with Subpart B of Part 1900 of this chapter. Borrowers who do not abide by the document will be handled in accordance with § 1962.18 of Subpart A of Part 1962 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial practices for major crop and livestock enterprises within the county office area, which will be updated annually. The County Supervisor will obtain information necessary to develop key farm management practices from the Cooperative Extension Service (CES), Agricultural Stabilization and Conservation Service (ASCS), local seed and fertilizer dealers, and agricultural magazines and literature. Key management practices which have been agreed to by the borrower and the County Supervisor as needing improvement to correct deficiencies identified in the borrower's operation will be documented in Table D of Form FmHA 431–2. A copy of the plan *must* be given to the borrower. For those borrowers using other acceptable plans, key farm management and financial practices will be typed on a separate sheet of paper and given to the borrower.

(3) Require applicants, when developing their long-time and annual plans, to take into consideration any

plans developed with the Soil Conservation Service (SCS), the Extension Service (ES), or other available farm management service, which are applicable to the applicant's operation. When such plans are feasible to use, the County Supervisor will document in the file the reasons for not using the plans.

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Form FmHA 1962–1 *must* provide for the release of sufficient income to pay essential farm operating and family living expenses.

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962–1 in accordance with paragraph (b)(1)(iv) of this section. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(iii) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

(6) Send borrowers with loans secured by chattels 60 to 75 days prior to the expiration date for Form FmHA 1962–1 a letter similar to Exhibit A of this subpart, with Attachment 1. A new Farm and Home Plan, or other similar plans of operation acceptable to FmHA, and a new Form FmHA 1962–1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962–1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for the follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5-year operating history, the applicant's available production history will be used. This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in § 1945.154(a)(29) of Subpart D of Part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yield, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, for that particular farm, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agriculture commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. In development of unit prices, the State Director will consult with other agricultural agency representatives and agricultural lenders for the State and local areas before establishing commodity prices. State Directors in adjoining states will consult each other and will resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use these prices. In addition, the supplement required in this section for commodity prices will also contain the 5-year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). This information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

(3) Form FmHA 1962–1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962–1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 and § 1962.17(a)(2) of Subpart A of Part 1962 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases which would be average for the borrower for essential family living and farm operating expenses. Those borrowers whose requests are in excess of their average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file and if justified FmHA will approve the release. In addition, FmHA *must* make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of

Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the planned releases documented in Form FmHA 1962–1 binding.

§ 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrowers' farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and are required to maintain a recordkeeping system which provides, as a minimum, a record of cash receipts and expenditures, end of year balance sheets, and an income statement. Borrowers receiving EM loans of $100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine and document in the running record whether borrowers have selected, established, and are maintaining the required recordkeeping systems. For those borrowers who are unable to maintain a recordkeeping system, the County Supervisor will assist and provide guidance in helping these borrowers to develop, understand and utilize records. Such systems may include the farm record book available through FmHA (Form FmHA 432–1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial recordkeeping or accounting service, which is acceptable to FmHA.

(3) Failure of a borrower to maintain the required records will be cause for FmHA to reject a borrower for further financial assistance. Borrowers can also be denied loan servicing programs if the borrower has been previously advised in writing by the County Supervisor that the borrower is not keeping adequate records.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory Methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor or designee to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Exhibit A of Subpart S of Part 1951 of this chapter or who have had their loans reamortized, rescheduled, consolidated, written down and/or deferred. The District Director or designee will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have been indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Exhibit A of Subpart S of Part 1951 of this chapter.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred or had their loans restructured.

(iv) Borrower receiving manual production-type loans.

(v) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost or profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year and help them make sound management decisions.

(7) Determine what servicing actions are needed to develop a feasible plan

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available to the borrower.

(2) Options for types of enterprises available for the operation such as corn vs. soybeans, selling the crop vs. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations in the area.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations in the area.

(7) Debt repayment as compared to money available to pay debts.

(8) Cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431–2 and 1962–1 and in completing Form FmHA 431–2 or similar plans of operation acceptable to FmHA for the next year.

(3) Make a complete entry in the case file running record of the key management problems which were identified and discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results on Form FmHA 1960–12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An annual analysis will be conducted for borrowers:

(1) Who are experiencing financial and/or production management problems.

(2) Who are reorganizing or implementing a major change in operations which has not been completed.

(3) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(4) Whose loans have been restructured in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter.

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431–4, "Business Analysis-Nonagriculture Enterprise," and FmHA 432–10, "Business and Family Record Book," available at most FmHA offices can be used for these purposes.

§ 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

§§ 1924.63 through 1924.70 [Reserved]

§ 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report (Status Report of Farmer Program Accounts, 540) of farmer program borrower accounts monthly. Farmer Program accounts that are shown as delinquent will be served in accordance with Subpart S of Part 1951 of this chapter.

§ 1924.72 [Reserved]

§ 1924.73 Follow-up supervisory actions by District Directors and State Office staff.

(a) *Follow-up by the District Directors.* The District Director is responsible for seeing that the County office staff correctly conducts analyses with borrowers listed in § 1924.60(d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each county office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.*

(1) The State Director is responsible for seeing that special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Program chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60(d) of this subpart during each visit to a county office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any, is needed for the District Director and County Supervisor.

(3) The State and District Office should jointly and annually review the progress made in servicing of those borrowers listed in § 1924.60(d) of this subpart.

§§ 1924.74 through 1924.99 [Reserved]

§ 1924.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0061.

Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

(Date)
Borrower's Name)
(Address)

Dear _____:

Pub. L. 100–233 requires the Farmers Home Administration (FmHA) to notify you that you are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products and other property regularly sold in operating the farm so that you can pay essential family living and farm operating expenses. FmHA must also release ASCS and CCC payments which it holds as security for this purpose. The releases will continue up until the time FmHA accelerates your account.

To provide these releases to you, FmHA regulations require that you fill out Form FmHA 1962–1 to explain what items of FmHA security you intend to sell during this crop year. Please see Attachment 1 of this letter for an explanation of this form. We request that you contact this office within 10 days of when you receive this letter so that we can complete this form and you can receive releases on a timely basis.

Sincerely,

County Supervisor

Once a year, you will be asked to complete a plan (Form FmHA 1962–1) which will document the agreement between you and FmHA as to how proceeds from the sale of chattel property which serves as security for your FmHA loans will be released to you by FmHA. You will also need to list those buyers who you plan to sell your farm products to. This plan will give you and FmHA a clear idea of what income you expect from your operation and how those proceeds will be used. The plan will set forth the amount of money required for paying essential family living and farm operating expenses. You and FmHA must agree on how much money will be released from your crop proceeds. Such releases must be in accordance with FmHA regulations.

If the County Supervisor is unable to agree with and approve your plan for the use of the sales proceeds, you will receive a letter explaining why the County Supervisor is unable to approve your plan and how you may appeal the County Supervisor's decision. While an appeal is pending, FmHA will release sales proceeds to be used to pay essential family living and farm operation expenses.

Once a plan has been agreed on, it is important that you abide by the plan. The plan can always be revised or changed, as circumstances require, provided you and FmHA can agree to the revisions.

Planned sales can be listed by month, by quarter or by whatever period suits your operation the best. The form does not have to be completed to show each individual animal, bushel, bale, etc. The form is a plan: it contains only projections. We expect your projections to be realistic and based on your past experience, but we know that you cannot predict exactly how many bushels per acre you will harvest, exactly how many animals you will wean, etc. We also realize that you cannot predict prices to the penny. Sometimes you will have a buyer for your products who is not listed on the form. All we expect of you is to be as accurate as you can. Later, if the plan needs to be changed, you and the County Supervisor can work together to revise it. Many revisions can be agreed on over the telephone and a trip to the County

Office is not always needed. You are not required to check with FmHA before making a sale just because the price you expected to receive is different from what you had planned to receive. However, a difference in price might require your plan to be revised, so FmHA wants to be told about the difference as soon as possible after the sale is made. you are expected to obtain FmHA approval before making a major change in your operation or before you use sale proceeds in a way different than you agreed to.

If at all possible, you should let FmHA know if you are going to sell to a buyer who is not listed on the form. The attached chart gives certain examples when you must get prior consent from the FmHA and when you may advise FmHA after the sales of your farm products.

WHAT TO DO IF YOU WANT TO TAKE ACTIONS THAT ARE DIFFERENT THAN WHAT IS LISTED ON YOUR 1962-1 FORM

Get prior consent	Give notice afterwards
You Must Get FmHA's PRIOR CONSENT if You Want to: 1) Sell, exchange, consume, or otherwise dispose of property that is not listed on your Form 1962-1; 2) Dispose of chattel security in a way not listed in the "HOW" section of your Form 1962-1 (for example, feed corn to livestock instead of selling it; 3) Use proceeds in a way not listed in the "USE OF PROCEEDS" section of your Form 1962-1 (for example, use proceeds to buy equipment instead of to pay debt).	You Can Take Action and Then Give FmHA Notice AFTERWARDS if You Want to: 4) Dispose of your property at a time that is different than what you listed in the "MONTH" section of your Form 1962-1; 5) Sell (or exchange) your property to a person or business that is not listed in the "POTENTIAL PURCHASERS" section of your Form 1962-1; 6) Sell, exchange, consume, or otherwise dispose of a quantity of property that is different than what you listed in the "QUANTITY" section of your Form 1962-1; 7) Accept a price for your property that is different than what you listed in the "AMOUNT OF PROCEEDS" section of your Form 1962-1.

PART 1941—OPERATING LOANS

17. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

18. Section 1941.1 through 1941.50 are revised, Exhibit C of Subpart A is added, and Exhibit B of Subpart A is removed and reserved to read as follows:

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL–Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporation, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4–H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. FmHA forms are available in any FmHA office.

§ 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4–H clubs, Future Farmers of America, and similar organizations.

§ 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-tme hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of this subpart, for annual production loans or subordinations made to delinquent borrowers; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower of farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Fish. Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited eduction, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Recreation enterprise. An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4–H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term "security."

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§§ 1941.7 through 1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or

joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of this subpart and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see § 1941.4 of this subpart.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(iv) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own *or* operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and

(iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4–H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility requirements in § 1941.12 of this subpart, whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering all servicing options in Subpart S of Part 1951 of this chapter, including distressed Farmer Programs loans for softwood timber production in applicable areas, may qualify for annual production loans under this section or subordination under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled due to:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or under employment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Item D of Form FmHA 431–2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplied credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Non-disturbance agreements will be obtained, for the term of the FmHA annual production loan being made, from all creditors to whom the applicant is indebted when repayment of the indebtedness is behind schedule and will remain so at the time the FmHA loan is approved.

(b) Loan funds will be used to pay annual operating and family living expenses only, as further explained in § 1941.33(b) of this subpart.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA 1941–1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941–A–1, "Advice to Borrower of Financial Condition," of their serious financial condition; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941–A–1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

§ 1941–15 [Reserved]

§ 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or $5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than $15,000 in a fiscal year for real estate improvements or repairs. The following determinations must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricuultural commodity or as pasture.

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant will exceed $200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed $5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and the U.S. Fish and Wildlife Service," for assistance in implementation.

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months from the date the loan is closed or when the income from the operation is expected. Individual circumstances may warrant repayment schedules which are longer than 12 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA 440–9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be rescheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

§ 1941.19 Security.

Security must be adequate to assure repayment of the loan. The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of Subpart A of Part 1910 of this chapter or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner. Loans may be subordinated to another lender in accordance with § 1962.30 of Subpart A of Part 1962 of this chapter when the subordination will help the borrower to accomplish the objectives of the loan.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment, such as hand tools, power lawn mowers, and other items of like type not needed for security purposes.

(3) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(4) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than $10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Different lien positions on real estate are considered separate and identifiable collateral. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427–1 (State), "Real Estate Mortgage for _____," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Insurance.* See § 1941.88 of Subpart B of this part for insurance requirements.

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(f) *Income from products and program payments.* Assignments, consents and security interests relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441–8, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products in which FmHA has a security interest under UCC.

(3) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(5) A security interest on income from products and ASCS incentive and other agricultural program payments.

(g) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods *before* they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods *after* they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute Form FmHA 440–26, "Consent and Subordination Agreement," or Form FmHA 440–65, "Severance Agreement."

(h) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(i) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of Part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. Law 93–495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of Subpart F of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Real estate appraisals will be completed by an FmHA employee or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on Form FmHA 440–21, "Appraisal of Chattel Property," FmHA 422–1, "Appraisal Report (FARM TRACT)," and FmHA 1922–11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

(1) A chattel appraisal is required when an initial loan is made and chattels are required for security, and when refinancing chattel debt.

(2) A real estate appraisal is required when real estate is needed as additional security or for refinancing.

(b) *Appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(1) Certification by a National or State appraisal society.

(2) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meet the criteria for a certification in a National or State appraisal society.

(3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

§§ 1941.26–1941.28 [Reserved]

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A guaranteed OL loan may be made to an insured borrower provided:

(1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant may not exceed $400,000 at loan closing.

(2) For entity applicants who qualify as per § 1941.12(b)(4) of this subpart and have outstanding OL loans as individuals, the total insured and/or guaranteed OL principal balance, including the new loan request by the entity applicant, can never exceed the difference between what the total combination the individual members are entitled to and the total combination of the outstanding principal balance the individual members owe at loan closing. Example: Three brothers each have individual OL loans totaling $750,000. The maximum amount the brothers, as individuals, are entitled to is $1,200,000. The maximum loan available to the entity is $350,000, which is the difference between the $1,200,000 and the $750,000.

(3) The insured OL loan security must be separate and identifiable from the guaranteed OL security.

(c) An insured OL loan will be made to refinance a guaranteed OL loan when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the insured OL loan is closed.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL, and/or OL loans will not exceed $650,000.

§ 1941.30 Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440–2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

§ 1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See Exhibit A of this subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided the total insured operating loan principal balance at loan closing does not exceed $200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA 431–2 may be used when they provide the necessary information,

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained; and

(v) Send a signed copy of Form FmHA 1940–1 to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following actions will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapprovals should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the County Office computer terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951–B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940–10. (See FmHA Instruction 102.1, a copy of which may be obtained in any FmHA office.)

(c) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, prepare and excute a subsitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

§§ 1941.36–1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this chapter.

§§ 1941.39–1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

§§ 1941.43–1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

Exhibits to Subpart A

* * * * *

Exhibit B—[Reserved]

Exhibit C—Controlled Substance

(Note.—Exhibit C referenced in this subpart is available in any FmHA office.)

Subpart B—Closing Loans Secured by Chattels

19. Section 1941.54 is amended by revising paragraph (b) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.*—(1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officer will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

20. Section 1941.57 is amended by revising paragraph (a)(1) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) * * *

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possible meet the security requirements for the loan request.

* * * * *

21. Section 1941.88 is amended by redesignating paragraphs (a) through (d) as (b) through (e), adding new paragraph (a) and revising newly designated paragraph (b) and its title, and paragraph (c) to read as follows:

§ 1941.88 Insurance.

* * * * *

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA requires and "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, but not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart

A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

* * * * *

22. Section 1941.94 is revised to read as follows:

§ 1941.94 Supervised bank accounts.

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter.

23. Section 1941.96 is amended by revising paragraph (b) to read as follows:

§ 1941.96 Changes in use of loan funds.

* * * * *

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940–17, "Promissory Note," will not be revised nor will a corrected Form FmHA 1941–7, "OL—Other Credit Analysis," be prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431–2, "Farm and Home Plan," also on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

PART 1943—FARM OWNERSHIP, SOIL AND WATER RECREATION

24. The authority citation for Part 1943 is revised to read as follows and the authority citations for the following sections are removed:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

25. Section 1943.1 through 1943.50 are revised and Exhibit B is added to read as follows:

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers, farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FP loans to entrymen on unpatented public lands.

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expoenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant. An applicant/borrower who, because of their identity as a member of a group, has been subjected to racial or ethnic prejudice or cultural bias without regard to their individual qualities.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Undivided right. An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.

(c) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

§§ 1943.8–1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in Subpart A of Part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in achieving FO loan purposes as outlined in § 1943.16 of this subpart. However, this requirement does not prohibit the use of the State's regular allocation of FO funds for loans to applicants who are members of socially disadvantaged groups. (See Exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) Farm Ownership (FO) Loans and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups.")

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Applications for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immgiration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporations(s), partnership(s) or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641 "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(iv) Honestly try to carry out the conditions and terms of the loan. This requirements must be met by the individual members, stockholders, partners or joint operators.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own *or* operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (i) All of the members of the entity are related by blood or marriage, (ii) all of the members are or will operators of the entity, and (iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

§ 1943.13 Outreach program for applicants/borrowers who are members of socially disadvantaged groups.

The purpose of this section is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Applicants/ Borrowers who are members of socially disadvantaged groups.

(a) *Policy.* The FmHA FO Loan and Acquired Property Outreach Program is a concerted effort to:

(1) Make direct FO loan funds and the acquisition of inventory farmland more available to members of socially disadvantaged groups.

(2) Surface and correct problems and obstacles that prevent the participation of members of socially disadvantaged groups in the FO loan and credit sale programs.

(3) Increase the number of direct FO loans and credit sales made to members of socially disadvantaged groups in targeted and nontargeted areas.

(4) Target direct FO loan funds and acquired properties, as outlined in Exhibit B of this subpart, to ensure participation of members of socially disadvantaged groups in these programs.

(5) Provide pamphlets, publications and general information on the direct FO loan and credit sale programs to members of socially disadvantaged groups.

(6) Provide assistance to members of socially disadvantaged groups to assure that the application process is expedient and complete. Assistance will be provided to borrowers of socially disadvantaged groups through special farm initiatives to assure that sound operating procedures are implemented to enhance the borrower's chances for successfully achieving the objectives of the direct FO loan program.

(b) *Field action.* The State Director shall designate the Farmer Programs Chief to coordinate the Farmers Home Administration (FmHA) Farm Ownership (FO) Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. The State's Civil Rights Coordinator will act as a resource person for this program. The Farmer Programs Chief will:

(1) Maintain close liaison with local, State and national organizations serving social disadvantaged groups to ascertain the reasons for the lack of participation of members of socially disadvantaged groups in FmHA direct FO loan and acquired farmland programs.

(2) Work closely with County Supervisors, District Directors, and National Office officials to remove obstacles and solve problems relating to the making of direct FO loans and credit sales to members of socially disadvantaged groups.

(3) Attend meetings of local, State, and Federal Governments and private organizations concerned with the economic and social development of members of socially disadvantaged groups.

(4) Train members of socially disadvantaged groups, interested individuals and groups involved with socially disadvantaged activities, in the packaging of applications and distribution of materials for use in the direct FO loan and credit sale programs.

(5) Provide pamphlets and publications on the direct FO loan and credit sale program.

(6) Initiate special media outreach activities to inform members of socially disadvantaged groups of the availability of targeted and non-targeted direct FO loan funds and acquired farmland.

(i) Information must be provided to community and farm oriented organizations, agriculture colleges, other USDA agencies and community leaders who are active in the farming area.

(ii) Newspaper articles, radio announcements and public television broadcasts will be used to publicize the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. *State Directors and required to publicize the program at least twice annually in a newspaper most used by members of socially disadvantaged groups.* This effort will be monitored by the National Office through Coordinated Assessment Reviews (CARs) and special planned visits to selected States.

(c) *Reports.* (1) State Directors will keep the Assistant Administrator, Farmer Programs, advised of any problems encountered in carrying out the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Members of Socially Disadvantaged Groups which prevent their participation in this program.

(2) *Each State Director will make a semi-annual memorandum report to the Assistant Administrator, Farmer Programs, on May 1 and September 30 of each fiscal year on the Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of Socially Disadvantaged Groups.* The report will summarize accomplishments on the items set forth in § 1943.13(b) of this subpart. The following should also be included in the report:

(i) The State and County of each direct FO loan and credit sale made to applicant/borrowers who are members of socially disadvantaged groups.

(ii) Number of applications for direct initial and subsequent FO loans and credit sales received during the period.

(iii) Number of direct initial and subsequent FO loans and credit sales approved during the period.

(iv) Number of applications on hand for direct initial and subsequent FO loans and credit sales at the end of the reporting periods.

(v) Number of announcements placed in local newspapers, on radio and public television.

(vi) Amount of each initial and subsequent direct FO loans and credit sales approved during the reporting periods.

(vii) Total dollar value of direct initial and subsequent FO loans and credit sales approved during the reporting periods.

§ 1943.14–1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm production and management conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all of a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on or in close proximity to, the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants for nonfarm enterprises, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Construction costs for methane and gas facilities and essential equipment.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water, powerlines, gas lines, and other facilities necessary for the successful operation of the farm may be located outside the land owned, provided that appropriate rights or easements are obtained to ensure that the rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds are advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of this subpart) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited to $25,000.

(ii) There is adequate security for the loan; and

(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of the loan funds used for improvements on leased land will not exceed $10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance or guarantee any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland. A major portion of the goss total income must be farm income. The nonfarm enterprise income will be supplemental income.

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of $200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29 (b) of this subpart is exceeded.

(b) Loans my not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(i) of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicate that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A borrower with limited resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.6 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as reamortization or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 Subpart A of Part 1951 of this chapter.)

§ 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(b) *Real estate security. (1) A mortgage will be taken on the entire farm owned or to be owned by applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:*

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real

estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien or real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.2), except as modified by the "Memorandum of Understanding-FHA-FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security liens will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations, or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Security—nonfarm enterprise.* When an FO loan is made just to finance a nonfarm enterprise, even though a majority of the products are used on the farm such as alcohol or methane gas, a lien will be taken on the nonfarm enterprise facility and sufficient other property to adequately secure the loan. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(g) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals* who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an FO loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.20–1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas,

loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements including Subpart LL of Part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must provide evidence that they have received an ATF operating permit.

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such a dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(iv) A nonfarm enterprise facility does not have to be physically located on the farm.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in Subpart A of Part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) of this subpart for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and

will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431–4, "Business Analysis—Nonagricultural Enterprise," will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443–17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

(i) Pay costs and taxes connected with the sale;

(ii) Reduce the FmHA debt or any prior lien;

(iii) Make essential capital purchases; or

(iv) Pay essential farm and home expense.

(4) Real estate or an interest in real estate which is non essential to the operation and is retained after loan closing, will not be included in:

(i) The appraisal report.

(ii) The security instrument for the loan.

(iii) The total against the security.

(h) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided;

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(j) *Subdivision of large tracts of farmland, other than FmHA inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.

(4) Disposition or omisson of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts abainst the farm, unless the total debt against the security would be within its market value.

(l) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate wil be expected to pay the current rate when able to do so.

§ 1943.25 Options, planning and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA 440–34, "Option to Purchase Real Property," should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The aplicant shoud decide if the applicant wants the option recorded and

is responsible for paying any recording fees.

(3) Form FmHA 443–2, "Option for Purchase of Farm-Land to be Subdivided" may be used if a large tract will be subdivided into separate farms.

(i) Assignment of the interest of the applicant in whose name the tract is obtained will be made to each applicant who will acquire one of the units.

(ii) Form FmHA 443–3, "Assignment of Interest in Option (Land to be Subdivided)" may be used.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.*

(1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(i) Certification by a National or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for Farmer Program loans and will be specifically included as part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value, or if appropriate, the current cash value will be determined.

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. The provisions of Subpart E of Part 1901 of this chapter will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA–FCA," (available in any FmHA office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as appraisal methods, title clearances, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan may be made to a borrower with an outstanding guaranteed FO, SW, or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed $300,000 at loan closing.

(2) For entity applicants who qualify as per § 1943.12(b)(4) of this subpart and have outstanding FO, SW, and RL loans as individuals, the total insured and/or guaranteed FO, SW, and RL principal balance, including the new loan request by the entity applicant, can never exceed the difference between what the total combination the individual members are entitled to and the total combination of the outstanding principal balance the individual members owe at loan closing. Example: Three brothers each have individual FO, SW, and RL loans totaling $750,000. The maximum amount the brothers, as individuals, are entitled to is $900,000. The maximum loan available to the entity is $150,000, which is the difference between the $900,000 and the $750,000.

(3) Different lien positions on real estate are considered separate and identifiable collateral.

(4) All other requirements of the loan are met.

(c) New applicants and borrowers indebted to FmHA and/or and FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s)

provided their total outstanding principal indebtness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL OL and FO loans will not exceed $650,000.

(d) A borrower may use the same collateral to secure two or more loans, insured or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.31 [Reserved]

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* FmHA forms are available in any FmHA office. The following table is a guide on the forms needed and distribution:

FmHA form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
400–1	Equal Opportunity Agreement	2	1–0	1–0	1–C
400–3	Notice to Contractors and Applicants	3		1–C	1–C
400–4	Assurance Agreement	2	2–O&C	1–0	1–C
400–6	Compliance Statement	3		1–0	1–C
403–1[1]	Debt Ajustment Agreemnet	3(5)	1–0	1–0	1–C
410–1	Application for FmHA Services	1(8)	1–0	1–0	1–C
410–8	Applicant Reference Letter	1		1–0.	
410–9	Statement Required by the Privacy Act	2	2–O&C	1–C	1–0
410–10	Privacy Act Statement to References	2(10)		1–C	
422–1[1]	Appraisal Report-Farm Tract	1		1–0	
422–2[1]	Supplemental Report-Irrigation, Drainage, Levee, and Minerals	1		1–0	
424–1[1]	Development Plan	2(3)	1–0	1–0	1–C
427–8[1]	Agreement with Prior Lienholder	3(6)		1–0	1–C
431–1[1]	Long-Time Farm and Home Plan	2	2–O&C	1–C	1–0
431–2[1]	Farm and Home Plan	2(2)	1–0	1–0	1–C
431–4[1]	Business Analysis-Nonagricultural Enterprise	2	1–0	1–C	1–0
1940–1	Request for Obligation of Funds	4(4)	2–0&C(9)	3–O&C	1–0
440–2	County Committee Certification or Recommendation	1		1–0	
440–9[1]	Supplementary Payment Agreement	2	1–0	1–0	1–C
440–21[1]	Appraisal of Chattel Property	1		1–0	
440–34[1]	Option to Purchase Real Property	3(1)	2–O&C	1–0	1–C
440–45	Nondiscrimination Certificate (Individual Housing)	2	1–0	1–0	1–C
1940–21, 1940–22 or Exhibit H, Subpart G, Part 1940.	Environmental Review	1		1–0	
443–12[2]	Farm Ownership Individual Soil and Water Fund Analysis	3		1–C	
443–17[1]	Agreement to Sell Nonessential Real Estate	2	2–O&C	1–0	1–C
1940–20[1]	Request for Environmental Information	2	1–0	1–0	1–0
429–19[1]	Characteristics of Approved Applicants	3(7)		1–C	
1922–11[1]	Appraisal For Mineral Rights	1		1–0	
443–8[1]	Agreement (Between Seller, Purchaser, and Tenant)	4	4	1–C	1–C

O–Original; C–Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.
Notes to Table
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, three copies of plans and specifications will be required.
(4) An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
(5) Signed copy to creditor.
(6) Copy to lienholder.
(7) Copy to State Director.
(8) Record of applicant investigation, availablity of other credit, and so forth, which remain with the docket.
(9) Applicant must sign and date this form.
(10) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.
(11) When a facility such as an alcohol still or methane plant provides energy and the major portion of such products are used on the farm, the enterprise will not be coded "NFE."

(b) *Other docket items.* The running record and correspondence pretaining to the loan application and docket will be included. Other items may include supplementary information to Farm and Home Plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will

not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible.

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee.

(iii) Funds are requested for authorized purposes.

(iv) The proposed loan is based on a feasible plan. Planning forms other the Form FmHA 431–2 may be used when they provide the necessary information.

(v) The security is adequate.

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approving official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official or the reasons will be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440–35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder. If land to be acquired will be subdivided the following actions will be taken:

(1) Each assignee will sign Form FmHA 443–10, "Acceptance of Option by Assignee (Land to be Subdivided)."

(2) The buyer will sign Form FmHA 443–11, "Acceptance of Option by Buyer (Land to be Subdivided)."

(3) The originals of the forms will be mailed to the seller and copies retained in the County Office file.

(c) The applicant will arrange with the seller to take possession when land is being acquired. The following forms may be used if appropriate:

(1) Form FmHA 443–5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443–6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agree upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loans funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney,

Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951–B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940–10, in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum will be attached to the revised forms and sent to the State Office.

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§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1), except as modified for loans of $10,000 or less in § 1943.19 (b)(4) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement" or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirments or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.*

(1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State Form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 405–1, "Management System Card—Individual," to insure that the proceeds, or the specified portions of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If the co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. The individual(s) designated by the cooperative or corporation that will operate the farm will sign the note as co-signer(s) and will be personally liable for the debt.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter and/or Subpart S of Part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.45–1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

Exhibits to Subpart A

* * * * *

Exhibit B—Target Participation Rates for Farmers Home Administration (FmHA) Direct Farm Ownership (FO) Loan and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups.

I. *GENERAL:* Provisions of the Agricultural Credit Act of 1987 require Farmers Home Administration (FmHA) to establish target participation rates for providing direct Farm Ownership (FO) loan funds and acquired farmland assistance to members of socially disadvantaged groups. These rates are established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds and acquired farmland. The target participation rate established for each State, and each County within the State, is based on the proportion of minority rural population to the total rural population in the State, and for each County within the State.

II. *IMPLEMENTATION RESPONSIBILITIES:* States will meet their target participation rates in use of direct FO loan funds and the sale of inventory property.

A. The target participation rate, as provided in this Exhibit, will be applied to direct Farm Ownership loan funds and inventory property in the following manner:

1. The targeted portion of a State's Fiscal Year direct farm ownership allocation, as outlined in Exhibit A of Subpart L of Part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

2. *Inventory property.* States will ensure that members of socially disadvantaged groups have an opportunity to purchase, as a minimum, the number of inventory farms available October 1 of each year x a State's target participation rate. Sales of suitable inventory farmland will be handled in accordance with the applicable provisions of Subpart C of Part 1955 of this chapter. Leasing of inventory property will be handled in accordance with the applicable provisions of Subpart B of Part 1955 of this chapter.

III. *OTHER INFORMATION:* The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds and inventory farmland to counties having the larger socially disadvantaged population.

TOTAL U.S. PARTICIPATION RATE

State	Target participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	8
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. Total	10

26. Section 1943.51 through 1943.100 are revised to read as follows:

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physicial/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this Part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter (available in any FmHA office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with Subpart B of Part 1924 of this chapter.

§ 1943.54 Definitions.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantitites so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physicially separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for the applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I-94, "Immigration on Indefinite Parole" card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term

"mortgage" also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; and cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and it partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§ § 1943.57–1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1943.62 Soil and Water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Public Law 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar proposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, has a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) A cooperative, corporation, partnership or joint operation must:

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 143.54 of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing

on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar proposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

(8) If a tenant, has a satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

§ 1943.63—1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment, such as terracing, land leveling and ditching equipment, provided:

(i) Such equipment is needed and will facilitate the completion of maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(10) Pay the cost of construction of alcohol and methane gas facilities along with essential equipment.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the title price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see §1943.69 (b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to $25,000,

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated, and

(iii) There is adequate security for the loan.

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(b) The limitation found in § 1943.79 (c) of this subpart is exceeded.

(c) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to FmHA Instruction 2000–LL of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

§1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

§1943.69 Security

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines that the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the apraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(iv) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficient other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations, a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need by required if the stock represents the right to receive water and is transferrable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1962 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights of way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferees who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if ligation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of ____ years beginning on ____, 19__, created and established by a certain Lease dated _____, 19__, executed by _____ as lessor(s), recorded on ____, 19__, in Book ____, page ____ of the ____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(g) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§ 1943.70—1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements. Refer to Subpart LL of Part 2000 of this chapter (available in any FmHA office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must also provide evidence that they have received an ATF operating permit.

§1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this Chapter (FmHA) Instruction 426.1) when the loan is secured by real estate.

(2) See §1943.73 (a) of this subpart for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA 440–34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(i) Certification by a national or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a national or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An assignment is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.78 [Reserved]

§ 1943.79 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured SW loans may be made simultaneously with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed $650,000.

(c) An insured SW loan may be made to a borrower with an outstanding guaranteed FO, SW of RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed $300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(d) A borrower may use the same collateral to secure two or more loans made, insured or gauranteed under this

subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.81 [Reserved]

§ 1943.82 Loan docket processing.

(a) *Forms.* FmHA forms are available in any FmHA office. The following table is a guide to the forms needed and shows how they are distributed.

FmHA Form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400–1	Equal Opportunity Agreement	2	1–0	1–0	1–C
400–3	Notice to Contractors and Applicants	3		1–C	1–C
400–4	Assurance Agreement	2	2–O&C	1–0	1–C
400–6	Compliance Statement	3		1–0	1–C
403–1 [1]	Debt Adjustment Agreement	3(5)	1–0	1–0	1–C
410–1	Application for FmHA Services	1(8)	1–0	1–0	1–C
410–8	Applicant Reference Letter	1		1–0	
410–9	Statement Required by the Privacy Act	2	2–O&C	1–C	1–0
410–10	Privacy Act Statement to References	2(9)		1–C	
422–1 [1]	Appraisal Report—Farm Tract	1		1–0	
422–2 [1]	Supplemental Report—Irrigation, Drainage, Levee, and Minerals	1		1–0	
422–10 [1]	Appraiser's Worksheet Farm Tracts (Study of Comparable Properties)	1		1–0	1
424–1 [1]	Development Plan	2(2)	1–0	1–0	1–C
427–8 [1]	Agreement with Prior Lienhonder	3(6)		1–0	1–C
431–1 [1]	Long-Time Fram and Home Plan	2	2–O&C	1–C	1–0
431–2	Farm and Home Plan	2(2)	1–0	1–0	1–C
431–4 [1]	Business Analysis—Nonagricultural Enterprise	2	1–0	1–C	1–0
1940–1	Request for Obligation of Funds	4(4)	2–O&C(8)	1–0	1–C
440–2	County Committee Certification or Recommendation	1		1–0	
440–9 [1]	Supplementary Payment Agreement	2	1–0	1–0	1–C
440–21 [1]	Appraisal of Chattel Property	1		1–0	
440–34 [1]	Option to Purchase Real Property	3(1)	2–O&C	1–0	1–C
440–45	Nondiscrimination Certificate (Individual Housing	2	1–0	1–0	1–C
1940–21, 1940–22 or Exhibit H, Subpart G, Part 1940.	Environmental Review	1		1–0	
443–12 [2]	Farm Ownership and Individual Soil and Water Fund Analysis	3		1–C	
1940–20 [1]	Request for Environmental Information	2		1–C	
492–19 [1]	Characteristics of Approved Applicants	3(7)	1	1–0	1–C
1922–11 [1]	Appraisal For Mineral Rights	1		1–0	

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.

Notes to Table:
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, 3 copies of plans and specifications will be required.
(4) Signed copy to creditor.
(5) Copy to lienholder.
(6) Copy to State Director.
(7) Records of applicant investigation, availability of other credit and so forth, which remain with the docket.
(8) Applicant must sign and date this form.
(9) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veteran's preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible;

(ii) The County Committee certification has been properly completed and signed by a least two members of the Committee;

(iii) Funds are requested for authorized purposes;

(iv) The proposed loan is based upon a feasible plan or on other plans or documents acceptable to FmHA;

(v) The security is adequate;

(vi) Necessary supervision is planned; and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements; and

(iii) Indicate special conditions or agreements needed with prior lienholders, when appropriate; or

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approval official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA 440–35, "Acceptance of Option," or other suitable forms.

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, (available in any FmHA office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951–B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1)

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 194–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§§ 1943.86—1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in paragraph § 1943.69(b)(5) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement," or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.*

(1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 1905–1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives or corporations.* The appropriate authorized officers will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the County Office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents," will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.89–1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A of this subpart, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration, Department of Agriculture," for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.95—1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

* * * * *

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations [Removed and Reserved]

27. Part 1943 is amended to remove Subpart C (consisting of §§ 1943.101 through 1953.150).

PART 1944—HOUSING

28. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

29. Section 1944.23 is revised to read as follows:

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with Subpart S of Part 1951 of this chapter.

PART 1945—EMERGENCY

30. The authority citation for Part 1945 is added to read as follows and the authority citations for the Subparts and Sections are removed:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Economic Emergency Loans

31. Section 1945.119 is amended by revising paragraph (a) to read as follows:

§ 1945.119 Consolidation, rescheduling, reamortization and deferral.

(a) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of the EE loan and any existing EE loans, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

32. Section 1945.149 is amended by revising paragraph (b) to read as follows:

§ 1945.149 Additional Loans.

* * * * *

(b) All outstanding notes may be consolidated for EE loans for operating purposes in accordance with Subpart S of Part 1951 of this chapter.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

33. Section 1945.168 is amended by revising paragraph (c) to read as follows:

§ 1945.168 Rates and terms.

* * * * *

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

34. Section 1945.169 is amended by revising paragraph (a)(3) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(a) * * *

(3) When insured and guaranteed loans are involved with the same borrower, there must be separate security for each of the insured and guaranteed loans only when the amount of loans exceeds the total value of the collateral. Different lien positions on real estate are considered separate collateral.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

35. The authority citation for Part 1951 is added to read as follows and the authority citations for the Subparts and their Sections are removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Account Servicing Policies

36. Section 1951.7 is amended by removing paragraph (f), redesignating paragraphs (g) and (h) as (f) and (g) and revising paragraph (d)(1) to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * *

(d) * * *

(1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with Subpart S of Part 1951 of this chapter.

* * * * *

37. Section 1951.8 is amended by revising paragraph (a) to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17 (d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

* * * * *

38. Section 1951.9 is amended by revising the introductory text to read as follows:

§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.

"Distribution" means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2, "Farm and Home Plan"] and Form FmHA 1962–1, "Agreement for the use of Proceeds/Release of Chattel Security."

* * * * *

39. Section 1951.10 is amended by revising the introductory text to read a follows:

§ 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2] and Form FmHA 1962–1.

* * * * *

40. Section 1951.25 is amended by revising paragraph (b)(5) to read as follows:

§ 1951.25 Review of limited resources FO and OL loans.

* * * * *

(b) * * *

(5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

* * * * *

§§ 1951.33, 1951.40, 1951.41, 1951.44 and 1951.46 [Removed and Reserved]

41. Sections 1951.33, 1951.40, 1951.41, 1951.44 and 1951.46 are removed and reserved.

Exhibits C–1 through G–1 [Removed]

42. Subpart A is amended by removing Exhibits C–1 through G.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

43. Section 1951.262 is amended by revising paragraph (c)(2) to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

* * * * *

(c) * * *

(2) If the District Director and OGC concur with the County Supervisor's decision to take legal action to liquidate the account, the case will be returned to the County Supervisor. The County Supervisor should use the appropriate statement on Exhibit B–2 to Subpart B of Part 1900 of this chapter and use it to notify the borrower of FmHA's intent to accelerate the account and to foreclose for failure to graduate or failure to provide requested information. Any appeal will be conducted in accordance with the regulations in Subpart B of Part 1900 of this chapter. If the borrower does not appeal the notice of intent to accelerate or if the adverse decision is upheld, the County Supervisor will send the case to the District Director for acceleration of the account in accordance with Subpart A of Part 1955 of this chapter. Exhibit D of Subpart A of Part 1955 of this chapter (available in any FmHA office) will be completed in accordance with the FMI to delete the statement regarding deferrals.

* * * * *

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

44. Section 1951.314 is amended by revising paragraph (a)(8) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(8) When a decision has been made under Subpart S of this part to reamortize, reschedule or consolidate the farmer program loans of a borrower who also has an RH loan.

* * * * *

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

45. Section 1951.558 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 1951.558 Decision on servicing actions.

* * * * *

(c) * * *

(1) * * *

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter.

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

46. Subpart S (consisting of §§ 1951.901 through 1951.950) of Part 1951 with Exhibits A through Q is added to read as follows:

Subpart S—Farmer Program Account Servicing Policies

Sec.

1951.901 Purpose.
1951.902 Policy.
1951.903 Authorities and responsibilities.
1951.904—1951.905 [Reserved].
1951.906 Definitions.
1951.907 Notice of Loan Service Programs.
1951.908 [Reserved].
1951.909 Processing Primary Loan Service Program Requests.
1951.910 [Reserved].
1951.911 Processing Preservations Loan Service Programs Program Request.
1951.912 Mediation.
1951.913 Servicing Net Recovery Buyout Recapture Agreements.
1951.914 Servicing of Accounts Restructured Under Primary Loan Service Programs.
1951.915 [Reserved].
1951.916 Exception authority.
1951.917 FmHA Debt Restructuring Support Teams (DRST).
1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).
1951.919–1951.949 [Reserved].
1951.950 OMB control number.

Exhibits to Subpart S

Exhibit A—Notice of the Availability of Loan Service Programs for Delinquent Farm Borrowers; Attachments 1–10.
Exhibit B—Noncash Credit for Farmer Program Loan When Establishing Recapture Receivable.
Exhibit C—Net Recovery Buy Out Recapture Agreement.
Exhibit D—Shared Appreciation Agreement.
Exhibit E—Notification of Request of Mediation or Meeting of Creditors.
Exhibit F—Notification of Offer to Restructure Debt.
Exhibit G—Deferral, Reamortization, and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans.
Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements).
Exhibit I—Guideline for Determining Adjustments for Net Recovery Value of Collateral.
Exhibit J—The Debt and Loan Restructuring System (DALR$).
Exhibit K—Notification of Consideration for Preservation Loan Service Programs.
Exhibit L—Homestead Protection Program Agreement.
Exhibit M—Homestead Protection Program Letter.
Exhibit N—Leaseback/Buyback Agreement.
Exhibit O—Notice of Availability of Leaseback/Buyback. (. . . Owner . . .)
Exhibit P—Notice of Availability of Leaseback/Buyback. (. . . Operator . . .)
Exhibit Q—Waiver of Leaseback/Buyback Rights.

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.901 Purpose.

This subpart describes the policies and procedures that Farmers Home Administration (FmHA) will use in servicing most Farmer Program loans. The loans include Operating (OL) Loan, Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for Farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in Subparts L and N of this part. For the purposes of Subpart L of this part, when it has been determined that all the conditions outlined in § 1951.558(b) of Subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in Subpart F of this Part. This subpart does not apply to Farmer Program Non-Program (NP) loans. Examples of primary loan service actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments (including softwood timber loans) reducing interest rate on the loan, write-down of debt (including conservation set-aside easements) or a combination of these actions. Examples of preservation loan service actions that FmHA may take are leaseback/buyback and/or homestead protection. Exhibit A provides the Notice of Availability of Primary and Preservation Loan Service Programs for delinquent Farmer Program borrowers. Exhibit B provides a noncash credit for Farmer Program loan(s) when establishing recapture of debt write down. Attachment 1 of Exhibit A is the summary of Primary and Preservation Loan Service Programs. Attachments 2 through 10 are the various notices and response forms borrowers will use after the initial notice is sent. Exhibit C provides for a net recovery buyout recapture agreement. Exhibit D provides for a shared appreciation agreement when debt is written down. Exhibit E provides for notification of borrowers that FmHA will request mediation or a meeting of creditors. Exhibit F provides notification to the borrower that FmHA is offering to restructure. Exhibit G provides policies and procedures for a deferral, reamortization, and reclassification of distressed Farmer Programs (FP) Loans, including Softwood Timber Production (ST) Loans under this subpart. Exhibit H provides policies and procedures for a Primary Loan Service Program (Farm Debt Restructure and Conservation Set-Aside Easement) under this subpart. Exhibit I provides Net Recovery Value Determinations. Exhibit J provides an explanation of the Debt and Loan Restructuring System (DALR$). Exhibit K provides notification to the borrower that FmHA is considering them for Preservation Loan Service Programs. Exhibit L provides for a Homestead Protection Program Agreement. Exhibit M provides for notification of the Homestead Protection Program to the borrower after the real estate property has been taken into Government inventory. Exhibit N provides for a Leaseback/Buyback Agreement. Exhibit O provides notification to *former owner* of the availability of Leaseback/Buyback. Exhibit P provides for notification of *former operator* of the real estate of leaseback/buyback. Exhibit Q provides a waiver of Leaseback/Buyback rights when the former owner/operator is not interested in Leaseback/Buyback.

§ 1951.902 Policy.

(a) To have a complete understanding of FmHA's servicing policy, the following policy statement is being published in the regulations. Any Farmer Program borrower may request Primary or Preservation Loan Service Programs. However, borrowers must be unable to pay their debt as scheduled before FmHA will use Primary or Preservation Loan Service Programs. The County Supervisor will use an FmHA computer program (DALR$) to assist in identifying, combining, and documenting the loan service programs that will keep the farmer on the farm and provide the best net recovery to the Government. Servicing is a continuing process, not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives:

(1) To help the farmers manage credit so they can return to private sector credit sources, and

(2) To minimize costs to the Government of providing this opportunity to farmers in financial difficulty. Borrowers' accounts must be managed with an overall objective of keeping the farmer in business and at the same time, minimizing loan costs and losses. The tools are rescheduling and/or reamortization, lower interest rates, deferments, and write-down of debt. FmHA can also use Conservation Easement and Softwood Timber Programs where and when applicable.

To establish an effective servicing policy, it is necessary to include the borrower whose loan payments with FmHA are current. This can be called Phase I. FmHA's servicing objective is to keep the borrower in business, paying at regular rates and on regular terms with graduation being the primary objective. The servicing tools available to keep a borrower in Phase I are rescheduling and/or reamortization. These tools must be used before an account gets behind schedule and must be considered before lower interest rates and deferrals. In order for servicing to be effective, all farmer program loans, must be reviewed annually, prior to the date the annual payments are due. This is necessary in order to determine what, if any, servicing action needs to be taken to keep an account from becoming delinquent. However, indiscriminate and careless use of the servicing tools ultimately increases borrower failures and program losses. When it becomes evident that FmHA cannot keep a borrower in business, paying regular rates and after having extended terms to the maximum extent allowable, the borrower is considered to be in Phase II where FmHA has more debt management tools available. These additional tools are lower interest rates and deferrals. The objective is still the same, keep the borrower farming and minimize loan costs and losses to the Government. Depending upon the reasons the borrower entered Phase II, it is reasonable to expect, with proper servicing, along with normal production and marketing conditions, recovery and return to Phase I. However, some borrowers may stay in Phase II as long as they are indebted to FmHA. Here again, servicing should be used to prudently avoid delinquency rather than try to remove it. When it becomes impossible to keep an account from being delinquent and such delinquency exists for 180 days, the borrower is considered in Phase III. The borrower receives the Notice of Availability of Primary and Preservation Loan Service Programs for Delinquent Farmer Program borrowers. This phase begins the complicated process of determining if keeping the farmer on the farm will provide the best net recovery to the Government or whether liquidation offers the best net recovery. FmHA also will automatically considered the Preservation Loan Service Programs in this phase when it is determined that the Primary Loan Service Programs will not keep the farmer on the farm. FmHA's primary servicing tools in this phase include consolidation, rescheduling, reamortization, deferral, softwood timber loans, conservation easements, and write-down of a borrower's debt. The procedure, at this point, requires an appraisal of all collateral and a sound and accurate determination as to whether or not the best net recovery to the Government exists in write-down of debt and continuation of the farming operation, or in liquidation of the collateral securing the FmHA debt. The debt must be written down to a level at which a feasible plan can be developed. The write-down can go down to an amount that will provide a return to the Government equal to net recovery from an involuntary liquidation. FmHA will continue with the borrower if net recovery from loan payments on the debt after debt write-down equals or exceeds net recovery from liquidation. Once it has been determined that a borrower is not eligible for the Primary Loan Service Programs, every effort must be made to keep the farmer in business, using mediation if necessary and available, in an attempt to get other creditors to restructure their debt if that is what is needed to develop a feasible plan. If it is determined that FmHA cannot restructure the borrower's debt, a Notice of Intent to Accelerate will be sent to the borrower. This Notice will advise the borrower of the right to a meeting with FmHA, an appeal, request an independent appraisal and buy out the FmHA debt at net recovery value. If none of the rights offered in the Notice of Intent to Accelerate provide a favorable solution to the determination that the account cannot be restructured and the borrower does not buy out at net recovery value, FmHA will automatically consider the borrower/owner for the Preservation Loan Service Programs. If the borrower/owner is eligible for the Preservation Loan Service Program, FmHA expects to enter into a contract with the borrower wherein FmHA determines the borrower will receive a leaseback/buyback and/or homestead protection upon conveyance of the real estate and chattels securing the debt. It is expected that the transaction of conveyance from the borrower(s) and reconveyance by FmHA to the borrower(s) take place at one sitting, similar to a loan closing. This means that all documents necessary to complete this transaction must be prepared in advance and be ready for appropriate signature, etc.

(b) When making an adverse decision on the borrower's loan servicing request or before accelerating the loan account, the borrower must be notified of the adverse decision and of the opportunity to appeal. When a borrower's debts cannot be restructured or Preservation Loan Service Programs cannot be used by the borrower/owner, liquidation is required. FmHA will consider the borrower in Phase IV at this point. Both before and after acceleration the borrower can sell the property for market value or voluntary convey, to FmHA. If FmHA takes the property into inventory, the farmer is now in Phase V and has the opportunity, along with spouse and children to once again be considered for the Preservation Loan Service Programs. The farmer also may elect to use the Homestead Protection Program rather than leaseback/buyback which also can provide a base for farming operations. Leaseback/buyback rights are available in Phase V to spouse and children and family-size operators. Homestead rights are available to only the former owner. In summary, the loan servicing policy is this:

(1) Use rescheduling and/or reamortization at regular interest rates to keep a borrower in Phase I if at all possible. If that is not possible, go to Phase II.

(2) In Phase II, use rescheduling and/or reamortization at limited resource interest rates and consider deferral, including softwood timber loans, if necessary, to keep a borrower from becoming delinquent. When a borrower's loans cannot be restructured using any or all combinations of consolidation, rescheduling, reamortization, deferral, and softwood timber programs where applicable, and with limited resource rates, begin Phase III. The borrower can apply for debt write down and conservation easements before the borrower is 180 days delinquent. Remember that when a loan is 180 days delinquent, FmHA must send Exhibit A with Attachments 1 and 2 of this subpart.

(3) In Phase III, FmHA calculates whether or not the best net recovery to the Government is by keeping the farmer on the farm by using the Primary and Preservation Loan Service Programs or through liquidation. At this point, the borrower is considered for a debt write-down. The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of Primary Loan Service Programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time using a specific discount rate. FmHA will use a discount rate based on the 90-day Treasury bill rate. FmHA will analyze the costs of involuntary liquidation to determine the net recovery value of the collateral

securing the debt as if it was involuntarily acquired and disposed of under the normal FmHA inventory property disposal process. The County Supervisor will determine the current market value of the collateral in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property." If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral, FmHA will restructure the debt if the borrower accepts the offer within 45 days after written notice. The Phase III process may include mediation if an approved State Mediation Program is available or, when an approved State Mediation Program is not available, an effort must be made by FmHA to get under-secured creditors and the borrower together with a mediator where mediators are available, when the other creditor's debt is the reason a feasible plan cannot be developed. FmHA State Directors will develop a State supplement that outlines how the mediation program for their geographic jurisdiction will be administered. State Directors will work with the Administrator of the Certified State Agricultural Mediation System, farm groups, and the Attorney General's office in those states in which mediation exists in order to develop a reasonable and comprehensive policy on how the federal regulations and the State Mediation Programs will coincide. When an approved State mediation program is not available, FmHA will attempt to get undersecured creditors involved in negotiating a restructuring plan. If trained mediators are available, State Directors may contract with them to facilitate the negotiations of debt adjustment with undersecured creditors. If undersecured creditors agree to restructure debts owed to them, so that the borrower can develop a feasible plan of operation, FmHA will restructure the borrowers debt to FmHA. If undersecured creditors will not participate in negotiations to restructure debts, FmHA will make the determination that a feasible plan of operation cannot be developed and will proceed with appropriate action to liquidate the borrower's accounts after the borrower has the opportunity to appeal the FmHA decision. If a feasible plan cannot be developed, the borrower has the opportunity to retain the security property by paying FmHA the net recovery value. Credit will not be provided by FmHA for this transaction. When all or any combination of these servicing tools show that the best net recovery to the Government is keeping the farmer on the farm, the debts will be restructured. The borrower cannot pay off FmHA at net recovery value if a feasible plan can be developed with debt restructuring.

(4) When all or any combination of Phase III servicing tools have been fully and carefully considered and it is determined that the best net recovery to the Government is in liquidation, the borrower will be considered in Phase IV which is the liquidation process. If write down will not work, FmHA automatically considers the Preservation Servicing Program application. Before acceleration, FmHA will offer Preservation Loan Service Programs to borrowers. Both before and after acceleration, the borrower can apply for debt settlement when conveying the property, either by sale at market value or voluntary conveyance to FmHA. The normal debt settlement procedures will be followed.

(5) After liquidation, the borrower is considered in Phase V. This last phase is when the property securing the loans passes into FmHA inventory. In this phase, once again, Preservation Loan Service Programs must be offered to the borrower. The objective is to try to keep the farmer on the farm. The borrower/owner's spouse and/or children are now considered in the priority for leaseback/buyback. This will be done with the Leaseback/Buyback Program for the farm or through the Homestead Protection Program for the home and 10 acres. The borrower/owner's spouse and/or children are not eligible for homestead protection. The former borrower/owner or immediate family must meet the eligibility requirements which are set forth in the regulations for leaseback/buyback.

(6) The borrower will have the opportunity to appeal all FmHA adverse decisions.

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the automated tracking system to track and manage the Farmer Program primary and preservation loan servicing programs.

(b) *Authorities.* All loan servicing decisions will be made by the County Supervisor except write-down of a borrower's debt. County Supervisors are authorized to accept a buyout when the borrower(s) pay the net recovery value of the FmHA security set forth in § 1951.909. Only State Directors are authorized to approve write-down of a borrower's debt. This includes debt written down when buy out at net recovery value takes place. Write-down of a borrower's debts will be processed in accordance with § 1951.909 of this subpart. County Supervisors are authorized to consolidate and reschedule/reamortize loans one time. If subsequent reschedulings/reamortizations are necessary, approval must be in writing by the District Director.

§§ 1951.904–1951.905 [Reserved]

§ 1951.906 Definitions

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has or is presently operating the farm and has outstanding obligations to the Farmers Home Administration (FmHA) under any Farmer Program loan(s), without regard to whether the loan has been accelerated, but does not include any such debtor all of whose loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers.

Child. The son or daughter of a previous owner of property that has been acquired by FmHA and who is of legal age to enter into a binding contract.

CONACT or CONACT property. Property which collateralized a loan made or insured under the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which collateralized other Farmer Programs loans.

Delinquent borrower. A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

Entity. A corporation, partnership, joint operation, or cooperative.

Entity members. For purposes of leaseback-buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. To be considered members of the same family, the members of an entity must be related by blood or marriage.

Farmer Program loans. This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood

Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Farm plan. Form FmHA 431–2, "Farm and Home Plan," or other plans or documents acceptable to FmHA that will accurately reflect the production and financial management of the farming operation for one production cycle. FmHA will not require the use of consolidated financial statements.

Feasible plan. A feasible plan is a plan based upon the applicant/borrowers' records that show the farming operations actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet scheduled payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

Foreclosed. The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

Homestead Protection. This refers to the right of a former owner to lease with an option to purchase the Homestead Protection property, not to exceed 10 acres.

Homestead Protection property. This refers to a borrower's principal residence which collateralized a Farmer Program loan.

Indian Reservation. Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

Inventory property. For purposes of leaseback/buyback this refers to real property which collateralized a Farmer Program loan to which the Government has acquired title.

Liquidated. The completed act of voluntarily selling security property to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection only accounts are not considered liquidated.

Loan service program. Loan Service Program means a Primary Loan Service Program or a Preservation Loan Service Program for farmer program borrowers.

Nonprogram (NP) loan. A NP loan results when loan(s) are made to ineligible applicants and/or transferees in connection with loan assumptions and sale of surplus inventory properties at ineligible terms after first being offered for public sale by sealed bid or auction. A borrower is not considered to have a nonprogram loan if the borrower is found to be ineligible after receiving the loan when the reason the borrower was originally determined eligible by FmHA or, by a court of law, was due to a mistake on FmHA's part.

Owner. An individual or an entity which held the fee title to the security but who may or may not have operated the farm at the time it was taken in to inventory. The owner need not have been an FmHA borrower in the sense that the owner was personally obligated on a loan from FmHA, but the owner must have pledged the farm as security for a CONACT loan.

Preservation loan service program. Preservation loan service program means:

(a) Homestead protection as described in § 1951.911 of this subpart, and

(b) Leaseback or buyback of farm land as described in § 1951.911 of this subpart.

Previous operator. An individual or an entity who leased the farm which collateralized a CONACT loan and conducted the day to day business at the time the farm was taken into inventory. The previous operator does not need to be an FmHA borrower.

Primary loan service program. Primary loan service program means:

(a) Loan consolidation, rescheduling, or reamortization;

(b) Interest rate reduction, including use of the limited resource program;

(c) Loan restructuring, including deferral, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(d) Any combination of actions listed in the paragraphs (a), (b), and (c) of this definition.

(1) *Consolidate.* Consolidate means to combine and reschedule the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans.

(2) *Deferral.* Deferral is an approved delay in making regularly scheduled payments, including (ST) loan.

(3) *Limited Resource Program.* The limited resource program is a reduction of interest rates for both operating loans (OL) and farm ownership loan (FO).

(4) *Reamortization.* Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for Subtitle A purposes.

(5) *Reschedule.* Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(6) *Write-down.* For purposes of this part, write-down is reducing a borrower's debt in an amount that will result in a feasible plan of operation. This includes Farm Debt Restructure and Conservation Set-Aside Easements as set forth in Exhibit H.

Security or security property. This refers to the real property which secures a CONACT loan.

§ 1951.907 Notice of Loan Service Programs.

(a) *Notification of Farmer Programs Borrower(s) Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985 and May 7, 1987.* All Farmer Program borrowers whose accounts have been accelerated but not foreclosed or liquidated will be sent Exhibit A with Attachments 1 and 2, certified mail, return receipt requested. A cover letter for Exhibit A and Attachments 1 and 2 will be issued by AN. (available in any FmHA office) The cover letter will inform accelerated borrowers who requested income release as provided for in unnumbered letters dated January 25, 1988, and February 2, 1988, entitled "Reinstatement of Releases for Accelerated Borrowers," that they must complete their application for Primary and Preservation Loan Programs within 45 days. A priority will be given to processing of completed applications for Primary and Preservation Loan Servicing for those borrowers who were accelerated between November 1, 1985,

and May 7, 1987, who requested income releases. If a borrower, whose account was accelerated, does not respond to Attachment 1 of Exhibit A, within 45 days, Attachments 7 and 8 of Exhibit A to this subpart, will be sent to the borrower certified mail return receipt requested. If the entire payment is not received within 30 days after receipt of the borrower's response to Attachments 7 and 8 or a voluntary conveyance or sale equal to the market value of the property is not requested, the account will be liquidated in accordance with § 1955.15 (e) of Subpart A of Part 1955 of this chapter.

(b) *Notification of all other Farmer Program borrowers whose FmHA loan accounts have been accelerated.* Farmer Program borrowers whose FmHA loan accounts have been accelerated, but not foreclosed or liquidated, will be provided with Exhibit A and Attachments 1 and 2 of Exhibit A by certified mail, return receipt requested. If these borrowers do not respond within 45 days, they will be sent Attachments 7 and 8 of Exhibit A by certified mail, return receipt requested. If the entire payment is not received within 30 days after receipt of the borrower's response to Attachments 7 and 8 or a voluntary conveyance or sale equal to the market value of the property is not requested, the account will be liquidated in accordance with § 1955.15 (e) of Subpart A of Part 1955 of this chapter.

(c) *Notification of borrowers with bankruptcies pending on January 6, 1988 whose accounts have not been foreclosed or liquidated.* The attorney of borrowers with Chapter 7, 11, 12, or 13 bankruptcies pending on January 6, 1988, will be sent Exhibit D of Subpart A of Part 1962 of this Chapter and Attachments 1 and 2 of Exhibit A of this Subpart. The account will be serviced in accordance with instructions from the Regional Office of General Counsel (OGC), and in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

(d) *Notification of borrowers who have been discharged or who had plans confirmed in bankruptcy prior to January 6, 1988, and who have not been foreclosed or liquidated prior to January 6, 1988.* The attorneys of borrowers who have been discharged in Chapter 7 bankruptcy prior to January 6, 1988, will not be sent Attachments 1 and 2 of Exhibit A unless they have reaffirmed their FmHA debt and are 180 days delinquent. However, the attorney of all other borrowers with confirmed Chapter 11, 12 or 13 plans who are 180 days delinquent will be sent Exhibit D of Subpart A of Part 1962 of this chapter and Attachments 1 and 2 of Exhibit A of this subpart. If the borrower has filed bankruptcy the account will be serviced in accordance with instructions from the Regional Office General Counsel (OGC) and in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

(e) *Notification of borrowers less than 180 days delinquent.* The County Supervisor will contact a delinquent farmer program borrower within 30 days after the borrower's account becomes delinquent and will, within 10 days, schedule a meeting to determine the reasons for the delinquency. A record of this contact will be placed in the borrower's loan file. If the borrower does not have the resources to bring the account current, the County Supervisor will use the FmHA computer program, Debt and Loan Restructuring System (DALRS) to consider the Primary Loan Service program authorized by § 1951.909 of this subpart in accordance with the order of processing established by § 1951.902 of this subpart. If the County Supervisor determines that the use of the Primary Service Programs will not assist the borrower in being able to develop a feasible plan, the County Supervisor will give the borrower Attachment 1 only of Exhibit A of this subpart. The County Office case file will be documented to provide a record that the borrower was provided a copy of Attachment 1 of Exhibit A of this subpart. If at the initial conference it is determined that write-down is the only alternative to keep the borrower in farming, the borrower's account will be processed in accordance with § 1951.909 of this subpart. Delinquent accounts will not need to be 180 days delinquent in order to consider writing down the debt.

(f) *Notification of borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, and in financial distress which exists because a borrower cannot develop a feasible plan by using rescheduling, reamortization, limited resource rates or deferral at maximum terms, will be sent Exhibit A with Attachments 1 and 2, "Notice of the Availability of Loan Service Programs," *by certified mail,* return receipt requested. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA will be handled in accordance with paragraph (g) of this section. Exhibit D of Subpart A of Part 1962 of this chapter with Attachments 1 and 2, of Exhibit A of this subpart will be sent to the borrower's attorney if the borrower has filed bankruptcy. In addition to the requirements set forth above, FmHA County Supervisors will provide Exhibit A with Attachments 1 and 2 of this subpart to all Farmer Program borrowers, as follows:

(1) At the time an application is made for participation in an FmHA loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section.

(2) On written request of any Farmer Program borrower, whether delinquent or not, and

(3) If a borrower has not previously received Exhibit A with Attachments 1 and 2 of this subpart, such Exhibit and Attachments will be provided before the earliest of:

(i) Initiating any FmHA liquidation action,

(ii) Accepting a voluntary conveyance of security property, or the borrower requesting permission to sell security property,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(g) *Notification of borrowers in non-monetary default or for delinquent borrowers also in non-monetary default or when a prior or junior lienholder is foreclosing and FmHA is notifed of the foreclosure.* Farmer Program borrowers who are in non-monetary default will be sent Attachments 1, 3, and 4 of Exhibit A of this subpart. If any problems are encountered, OGC may be contacted for advice. If a case is in the hands of the U.S. Attorneys, no loan servicing action will be taken without the U.S. Attorneys' concurrence as set forth in § 1962.40 of Subpart A of Part 1962 of this chapter, or § 1965.26 of Subpart A of Part 1965 of this chapter, as appropriate. Attachments 1, 3, and 4 of Exhibit A will be sent by certified mail, return receipt requested. If the borrower has filed bankruptcy the account will be serviced in accordance with instructions from OGC. Any servicing request will be processed as indicated in § 1951.909 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA appeal decision, that does not result in a resolution on the loan defaults, the account will be accelerated as set forth in § 1955.15 of Part 1955 of this chapter.

(h) *Request for primary or preservation loan service programs.* Farmer Program borrowers who are sent Exhibit A, with Attachments 1, 2 or Attachments 1, 3, and 4 must, within 45 days after receiving this exhibit and attachments, request consideration for

Primary Preservation Loan Service programs by completing Attachment 2 or Attachment 4, as appropriate, and returning to the FmHA County Supervisor with the required forms completed. FmHA will proceed with liquidation action if the borrower's request (Attachment 2 or Attachment 4) is not received within 45 days or the borrower is sent Attachments 3 and 4 and does not request a hearing within 30 days. If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the County Office unsigned. The 45 days response period will begin with the date the Post Office stamps the return receipt indicating the letter cannot be delivered to the borrower.

(1) An application for loan service programs will include the following forms (available in FmHA County Office):

(i) Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

(ii) Form FmHA 410–8, "Applicant Reference Letter."

(iii) Form FmHA 410–9, "Statement Required by the Privacy Act."

(iv) Form FmHA 431–2, "Farm and Home Plan," or any other plan acceptable to FmHA that sets forth a plan of operation.

(v) Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

(vi) Form(s) FmHA 1910–5, "Request for Verification of Employment."

(vii) Form FmHA 1924–1, "Development Plan," if development is planned. Complete plans, specifications, and cost estimates must be attached to Form FmHA 1924–1. When development is required to comply with "Highly Erodible and Wetland" requirements, estimated costs and the conservation plan developed by SCS will be used to satisfy this requirement.

(viii) Form AD–1026, "Highly Erodible Land and Wetland Certification," is included as part of the complete application after being completed by SCS. (This is available at SCS County Offices.)

(ix) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with FmHA for the farm operation(s). This form is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(x) An ASCS photo of the farm, on which the applicant must show the homestead site to be considered in processing a request for Homestead Protection. This information does not need to be provided if the applicant does not want to be considered for homestead protection.

(xi) An ASCS photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the Farm Debt Restructure and Conservation Easement program. This information does not need to be provided if the applicant does not want to be considered for conservation easement.

(2) The FmHA County Supervisor will provide the borrower with copies of the above forms and forms manual insert (FMI) with each form when Exhibit A is forwarded to farmer program borrowers. When requested by the borrower, copies of FmHA regulations will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA regulations were sent. Borrowers who were sent Exhibit A and Attachments 1 and 2 (borrowers who were 180 days delinquent) but not previously accelerated will be sent Attachments 9 and 10 of Exhibit A if they fail to respond within 45 days after they were sent Exhibit A and Attachments 1 and 2. If the borrower has filed for bankruptcy, the account will be serviced in accordance with instructions from OGC. The account will not be accelerated until any appeal has been concluded.

(3) No more than one 45 day period will be provided to a borrower to respond to the notice of loan service programs. Subsequent notices as provided for in § 1951.907 (f) and (g) of this subsection will not be issued until the first notice is resolved.

§ 1951.908 [Reserved]

§ 1951.909 Processing Primary Loan Service Programs Requests.

(a) *FmHA responsibilities.* Within 60 days after receipt of Attachment 2 or 4 and a completed application, the County Supervisor will consider all Primary Service Programs options in this subpart. The County Supervisor must use the FmHA computer program, Exhibit J, "Debt and Loan Restructuring System (DALR$)," to attempt to find the combination of loan service programs that will result in a feasible plan for the borrower. Borrowers requests for loan servicing who have disposed of all FmHA security property will be processed in accordance with Subpart B of Part 1956 of this chapter or Part 1864 of this chapter (FmHA Instruction 456.1), as appropriate. If the borrower's completed application for Primary Loan Servicing includes a request for the Farm Debt Restructure and Conservation Set-Aside Easement Program, as indicated by the borrowers submission of the information required in § 1951.907(h)(1)(xi) of this subpart; the County Supervisor will determine if the borrower is eligible based on criteria as set forth in Exhibit H of this subpart. If the borrower is eligible, the County Supervisor will make an estimate of the inputs needed to permit the DALR$ Computer Program to make the calculations of feasibility of the Conservation Set-Aside Easement. The assumptions used to establish the estimates will be documented in the borrower's case file and will be based on the County Supervior's knowledge of the borrower's farm, land values, the borrower's repayment ability, and the proposed easement acreage. When the DALR$ calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (i) of this section.

(b) *Adverse determination.* If the County Supervisor or approval official determines that the borrower is not eligible for any of the Primary Loan Service Programs or restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in § 1951.912 of this subpart. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent the Notice of Intent to Accelerate or to continue acceleration by using Attachments 5 and 6 of Exhibit A of this subpart. This will list and explain the options available to the borrower. The notice advises the borrower of the right to a meeting, right to appeal, right to an independent appraisal, and opportunity to buy the loans at net recovery value. The appeal, if any, will be completed before FmHA begins any further processing of the borrowers Preservation Loan Service Programs request. Once the appeal is concluded and the adverse decision on restructuring is upheld, and if the borrower has been determined eligible for the preservation programs, FmHA will complete the processing of the borrower's application for either Homestead Protection, Leaseback/Buyback, or both in accordance with § 1951.911 of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed for both Primary and Preservation Loan Service Programs.

(c) *Eligibility.* The County Supervisor or approval official authorized by § 1951.903(b) of this subpart must find

that the borrower who has applied for Primary Loan Service Programs meets *all* of the following requirements:

(1) The delinquency or financial stress does exist and any delinquency is due to circumstances beyond the control of the borrower due to a reduction in income which reduces the operator's cash flow to a point where outflows exceed inflows and which causes the need for Primary Loan Service Programs. A reduction of income does not by itself mean that the borrower is eligible. Acceptable reasons for reductions of income which could make a borrower eligible for Primary Loan Service Programs include:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm; or

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payment cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or loan market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements set forth on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and agreements made with FmHA. Any allegations of fraud, waste, and conversion used in order to deny borrowers' requests for Primary Loan Service Programs will be substantiated by FmHA, with a written legal opinion from the Office of General Counsel, before denying the borrower's requests for such programs.

(3) All applications received from borrowers who apply for Primary Loan Servicing, even though they are not eligible, must be processed to determine whether or not a feasible plan of operation can be developed. *Borrowers who do not meet* the eligibility criteria as set forth in paragraphs (c) (1) and (2) of this section, must be processed in the same manner as a *borrower who does not meet* the feasibility requirements. See § 1951.909(h)(3)(ii) of this subpart.

(d) *FmHA's feasibility determinations.* The County Supervisor must determine that the borrower will be able to:

(1) Meet the necessary family living and farm operating expense; and

(2) Service all debts, including those of the loans restructured; and

(3) Except for the establishment of a conservation easement under Exhibit H of this subpart, the loan, if restructured, must result in a net recovery to the Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Government from an involuntary liquidation or foreclosure on the property securing the loan(s). A comparison to net recovery to the Government will not be made when using conservation easements.

(e) *Primary Loan Service Programs.* Any Farmer Program borrower may request Primary Loan Service Programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA will approve Primary Loan Service Programs. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Debt write-down will *only be* used for delinquent borrowers who cannot develop feasible plans of operations without debt write-down.

(1) *Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the County Supervisor determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in § 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney and there are no FmHA plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation.

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of Exhibit M of Subpart G of Part 1940 of this chapter.

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the County Supervisor reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor will ask the Office of the General Counsel (OGC) for an opinion as to what lien position the Government will have if a new note is taken.

(vii) Only loans of the same type and interest rate will be consolidated.

(viii) EM actual loss and SL loans will *not* be consolidated.

(ix) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period.

(xi) If loans with a debt set-aside are to be rescheduled, the debt set-aside must be cancelled at the time the consolidation and/or rescheduling is granted. The borrower must agree in writing to cancellation of the debt set-aside if the consolidation and/rescheduling is to be approved. If the set-aside portion is not cancelled, then only the non set-aside portion will be rescheduled.

(xii) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date of the new note is signed).

(C) Repayment of EE loans may not exceed 20 years from the date of the original note.

(xiii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consoldiated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled.

In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) Limited Resource Rate. At the time of the consolidation and/or rescheduling action, OL loans may be assigned a limited resource rate if: (*1*) The borrower meets the requirements for the limited resource interest rate, and (*2*) a feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiv) The original (old) note(s) will be marked "Rescheduled" and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies are filed as indicated above. If part of a note is written down, the written down note will be marked "Rescheduled with Debt Write Down," and will be filed as indicated above in this paragraph.

(xv) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* This subsection explains how the FmHA County Supervisor can reamortize existing loans. Farmer program non-program (NP) loan debtors are not eligible to receive any program benefits including reamortization (see § 1965.34 of Subpart A of Part 1965 of this chapter). When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(i) The borrower meets the eligibility requirements of § 1951.909(c) of this subpart;

(ii) Such actions is not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney, and there are not plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes including all delinquent notes will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(vi) Loans that have been deferred in this subpart will not be reamortized during the deferral period.

(vii) If loans with debt set-aside provisions are to be reamortized, the debt set-aside will be cancelled. If the set-aside portion of the loan(s) is not cancelled, then only the non set-aside portion will be reamortized.

(viii) *Terms of repayment of reamortized loans are as follows:*

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The FmHA's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(C) The amount of accured interest more than 90 days overdue and any advances charged to the borrower's account will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). If there are not deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principle between the date the Form FmHA 1940–17 is processed and the next installment due date. See Section II E of Exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue.

(ix) *Interest.*

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be limited resource FO loan rate or the original loan note rate; whichever is less.

(B) At the time of the reamortization, an FO loan may be changed to a limited resource interest rate if: (*1*) The borrower meets the requirements for a limited resource interest rate, and (*2*) a feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section.

(x) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue.

(xi) The original (old) note(s) will be marked "Reamortized" and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked "Reamortized with Debt write Down" and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.*

(i) *Loan deferrals.* Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(A) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period.

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired

standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the schedule payments of all debts.

(iii) *FmHA's determinations.* The FmHA approval official must:

(A) Determine that the borrower meets the eligible requirements of § 1951.909(c) of the subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a feasible plan cannot be developed after consideration of a deferral, the County Supervisior will inform the borrower about the Softwood Timber (ST) loan program authorized by Exhibit G of this subpart by sending Attachment 1 of Exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the County Supervison to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of Attachment 1, the County, Supervisor will determine if the borrower is eligible, based on criteria as set forth in Exhibit G of this subpart. If the borrower is eligible the County Supervisor will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *FmHA loan deferral considerations.*

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represented the borrower's operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial, deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must submit feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request Primary Loan Service actions. It may be necessary to cancel existing deferrals or to defer additional loans to develop a feasible plan in such cases. If it is necessary to defer additional loans, such action will be taken if the deferral will result in a greater net recovery to the Government than debt write-down. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Special debt set-aside loans.* If a borrower desires a deferral for a loan that has a portion of the debt set-aside, the set-aside portion will be cancelled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who desires a deferral of a set-aside loan must first agree in writing to the cancellation of the set-aside if the deferral is approved.

(vii) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in §§ 1951.909(e)(1)(xiii) and 1951.909(e)(2)(ix) of this subpart.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of of § 1951.909(e)(3)(v) of this subpart are met. The County Supervisor will determine the amount of interest that will accrue, if any, during the deferred period. This interest will be repaid in equal amortized installment during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with this subpart. The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue.

(B) The Finance Office will be notified of the deferral by the County Office completing Form FmHA 1965–22 and 1965–23. The FmHA Finance Office will remove the borrower's name from the delinquency report.

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter (available in any FmHA office). The Finance Office will provide the County Office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the FmHA debt.

(E) The County Supervisor must notify the Finance Office of any cancellation of a deferral by letter.

(viii) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by § 1924.60 of Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make

some payments during the deferral period, the County Supervisor will, in writing, ask the borrower to sign a Form FmHA 440–9, "Supplementary Payment Agreement," within 30 days of the date of the written request. The letter will provide the borrower with the right to appeal as set forth in subpart B of Part 1900 of this chapter. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the County Supervisor will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. If the borrower does not sign a Form FmHA 440–9 or appeal the request for a supplement payment within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program. The borrower's account will be handled as set forth in § 1951.907(g) of this subpart.

(4) *Special debt set-aside provision for a portion of the insured loan indebtedness of farmer program borrowers (NOT AVAILABLE AFTER SEPTEMBER 30, 1985).*

(i) *Period of time available.* The authorities contained in this section were available to financially stressed FmHA farmer program borrowers (OL, FO, EO, SW, EE, EM, RL but not association recreation loans and/or *only* those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985. The County Supervisor will maintain a record of approval special set-aside amounts, in accordance with FmHA Instruction 1905–A (available in any FmHA office).

(ii) *Agency Finance Office Actions are as follows:*

(A) The FmHA Finance Office has established the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951–6.

(B) The Finance Office will provide each county office with a quarterly status report for each borrower receiving a set-aside.

(C) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount of the borrower's upcoming installment(s) due date.

(D) The interest rate on the set-aside portion of the note, after the set-aside period has passed, will be the same rate as on the non-set-aside portion of the note

(iii) *Cancellation of special set-aside agreements may take place under the following circumstances:*

(A) Borrowers who incur debt or purchase items not planned for in the Farm and Home Plan without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements, or cease farming will have their set-aside cancelled by the County Supervisor.

(B) The County Supervisor will send written notice by certified mail, return receipt requested, to the borrower of FmHA's intention to cancel the set-aside. This notification will set forth the specific facts requiring cancellation and inform the borrower of appeal rights in accordance with Subpart B of Part 1900 of this chapter. If the borrower does not appeal or if the FmHA decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation date of the set-aside. The actual cancellation action is not appealable.

(C) The County Office will be responsible for notifying the Finance Office of the cancellation action using a properly executed Form FmHA 1951–6 prepared according to the FMI.

(iv) *Requirements for servicing set-aside loans are as follows:*

(A) Loan notes which are rescheduled and contain set-aside provisions in accordance with this section will not be consolidated during the set-aside period unless the borrower agrees in writing to the cancellation of the set-aside if consolidation is approved.

(B) Loan notes which are rescheduled and do not contain set-aside provisions in accordance with this section may be rescheduled or reamortized in accordance with this subpart during the set-aside period. The rescheduling or reamortization action may be the limited resource rate, if applicable. The set-aside amount will stay in effect, but will not be increased or intensified beyond the original five-year term. The County Office will forward to the Finance Office Form FmHA 1965–22 and Form FmHA 1965–23 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked in red "Interest Change in Set-Aside."

(v) *Deficiency judgements.* Interest will begin to accrue (at the higher of the current interest rate or the judgement interest rate) on the set-aside portion if FmHA receives a deficiency judgement.

(5) *Write-down of FmHA loans.* Priority consideration will be given to writing down farmer program loans whenever such write-down will facilitate keeping the farmer on the farm or ranching operation. The following conditions shall be met for write-down of FmHA loans:

(i) No other Primary Loan Service Program nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(ii) A feasible plan must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(iii) The borrower must present a preliminary plan that demonstrates that the borrower will be able to:

(A) Meet the necessary family living and farm operating expenses, and

(B) Service all existing and planned debts, and

(C) Comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter, if applicable, and

(D) Borrower must agree to a Shared Appreciation Agreement if the loan(s) is secured by real estate.

(iv) The borrower should participate in a meeting with creditors if it is necessary that the borrower's creditors make some debt adjustments that will permit the development of a feasible plan. This meeting may be in a Certified State Agricultural Mediation Program or a meeting of creditors arranged by FmHA, the borrower, or other creditor. Failure by the borrower to participate in meetings with FmHA and other creditors will be noted in the case file. Failure to participate will be listed as a reason for the intended adverse action on Attachment 5 Exhibit A of this subpart.

(v) *Rates and Terms.* Remaining debt after restructuring with the Primary Loan Servicing Programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section. The borrower must agree in writing to the cancellation of a fully or partially set-aside portion of the loan(s) if a write-down is approved.

(f) *Determining value of net recovery from involuntary liquidation.* Within 60 days of the County Supervisor's receipt of a complete application which requests Primary and Preservation Loan Service Programs, the County Supervisor must make the calculations required in this section.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt in accordance with Exhibit J, "Debt and Loan Restructuring System," and will follow

the guidance provided by State supplements and Exhibit I, "Guidance for Determining Adjustments for Net Recovery Value of Collateral." The County Supervisor will determine the current market value of the collateral including tangible and intangible property in existence and of record in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property (available in any FmHA office)." Collateral may include real estate, chattels, and tangible or intangible property. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible or intangible property may include accounts receivable, Government Payments. From the current market value of the collateral, the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral property;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in Exhibit B of FmHA Instruction 440.1, available in any FmHA office). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property, will be established by each State as of July 1 each year.

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(2) of this section.

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses; and

(vi) Add income which will be received after acquisition.

(2) *Determining costs of involuntary liquidation of collateral for farm loans.* The State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs and average holding time to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Exhibit I, "Net Recovery Value Determination," will be used in establishing the guidelines contained in the State supplement. Such costs analyses will be carried out in July of each year. State Directors will consult with State Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(h) *Notification requirements.* (1) If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral securing the debt, the County Supervisor will forward to the State Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The County Supervisor will certify that the borrower meets all requirements for debt restructuring with the write-down amount specified on the printout. The State Director's authorization to the County Supervisor to proceed with the write-down will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor. Within 60 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F, "Notifications of Approval Offer to Debt Restructure." Exhibit F will inform the borrower(s) of FmHA's offer to restructure the debt. If the borrower accepts the offer, within 45 days of the borrowers receipt of Exhibit F, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance of FmHA's offer to restructure the debt. If the borrower, both accelerated and nonaccelerated, do not respond to Exhibit F within 45 days, or declines FmHA's offer to restructure the debt. the County Supervisor will send Attachments 9 and 10 of Exhibit A of this subpart. If Attachment 10 is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of Part 1955 of this chapter.

(2) If the borrower previously returned Attachment 2 or 4 to Exhibit A of this subpart within 45 days, requesting a Farm Debt Restructure and Conservation Set-Aside Easement Program, by submitting an ASCS photo of the farm showing the portion of the farm and approximate acres to be considered in their request, the County Supervisor will proceed with processing the request for debt relief. The request will be processed as set forth in Exhibit H of this subpart.

(3) If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Set-Aside Easement Programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested.

(i) When the borrower has creditors other than FmHA, and a feasible plan of operation cannot be developed after consideration of Primary Loan Service, Softwood Timber and Farm Debt Restructure and Conservation Set-Aside Easement Programs, the borrower will be sent Exhibit E, "Notification of Request for Mediation or Meetings of Creditors," of this subpart, certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to Exhibit E. Exhibit E will inform the borrower that FmHA is requesting mediation or a meeting with the borrower's undersecured creditors holding a substantial portion of the borrowers debt, in an effort to obtain a debt adjustment agreement with such creditors which may permit the development of a feasible plan of operation. If the borrower does not respond to Exhibit E within 30 days (a response is *only* required in States without a certified mediation program), the County Supervisor will send Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be sent Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to Attachment 5 of Exhibit A. Attachment 5 of Exhibit A will inform the borrower of further rights. This section also applies to borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987, and other

accelerated borrowers whose accounts have not been foreclosed or liquidated.

(iii) As stated in Attachment 5, the borrower will have 45 days after the receipt of the notification of ineligibility to purchase the security property at net recovery value, provided the value of the restructured loan is less than the recovery value. FmHA will not provide credit for this transaction.

(iv) Prior to the buy out at net recovery value, the borrower must, as a condition of the sale, enter into written agreement by executing Exhibit C, "Net Recovery Buyout Recapture Agreement," of this subpart. The County Supervisor will process the net recovery buyout payment and will input the information to establish the recapture receivable account via the multi-function workstation. A new mortgage or deed of trust will be taken for the best lien obtainable. The new mortgage or deed of trust will describe Exhibit C and enter the amount due under the net recovery buyout recapture agreement. The new mortgage or deed of trust will secure repayment of the net recovery buyout recapture agreement. The old mortgage or deed of trust will be released in accordance with § 1951.909(k) of this subpart.

(i) *Administrative appeals.* (1) If the borrower appeals the decision to deny Primary Loan Service Programs, the 45 day period for the borrower to pay FmHA net recovery value of the collateral will start on the day the borrower receives the final appeal or review upholding the initial decision. Such decision letter will be sent to the borrower by the Hearing Officer or Review Officer certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office by the Hearing and/or Review officers.

(2) If the administrative appeal process results in a determination that the borrower is eligible for debt write-down, the County Supervisor will write-down the loan in accordance with this subpart, taking into consideration the write-down recommendations, if any, of the Appeal Officer. If the administrative appeal process results in a determination that the borrower is ineligible for debt write-down, the borrower will be sent Exhibit K and Attachment 1 of Exhibit K, advising the borrower of FmHA's intent to continue processing the application for Preservation Loan Service Programs as set forth in § 1951.911 of this subpart. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that Exhibit K is sent, the County Supervisor will continue to process the borrower preservation loan service request in accordance with § 1951.911(a)(5) of this subpart. The account will not be accelerated or forclosure will not continue, until the borrower has the opportunity to appeal any denial of the Preservation Loan Service request. If the borrower returns Attachment 1 of Exhibit K within 15 days of the date Exhibit K is sent, the account will be accelerated or foreclosure will proceed in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under § 1941.14 of Subpart A of Part 1941 of this chapter.

(3) If the borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by FmHA in accordance with § 1900.57 (1) of Subpart B of Part 1900 of this chapter. The borrower does not have to exclusively appeal the current market appraisal in order to be entitled to the independent appraisal, but simply must appeal the denial of Primary Loan Service Programs in which the appraisal, as part of the net recovery value calculation, is relevant. The cost of the appraisal must be paid by the borrower. The independent appraisal will be considered by the appeal officer. The independent appraiser must meet at least one of the following qualifications as determined by the FmHA County Supervisor:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraisers qualifications.

(j) *Processing of write-down.* Borrowers *who are eligible* for Primary Loan Service Programs with write-down will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the write-down must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in § 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the write-down. The FmHA DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form FmHA 1940–17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940–17 and on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(4) A Form FmHA 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the County Office *before* Form FmHA 1040–17 is processed.

(5) The County Supervisor will complete Form FmHA 1965–22, "Information on Assumption on New Terms or Other Change in Terms," Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms," and Exhibit D of this subpart in accordance with the provisions of the forms manual insert.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(k) *Real estate liens.* If the write-down of the borrower's real estate debt results in all debts to FmHA being written down, FmHA real estate liens will be maintained and will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of net recovery in a buy out, the original mortgage or deed of trust will be released on real estate for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative. Net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non real estate liens.* If a borrower *does not own* any real estate there will

be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of Net Recovery Value in a buy out, the original security instruments will be released on chattel security for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing debts written off as a result of Primary Servicing debt write-down or buy-out at net recovery value will be returned to the debtor or to the debtor's legal representative. The notes will be returned at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a buyout, the original and copies of the notes will be marked "satisfied by approved net recovery buyout." For write-down, the original and copies of the notes will be marked "satisfied by approved debt write-down." If a note is only partially written-down, the note will be returned to the debtor or debtor's legal representative when the note is paid in full. The original and copies of such notes will marked "satisfied by approved partial write-down."

§ 1951.910 [Reserved]

§ 1951.911 Preservation loan service programs.

(a) *Leaseback/Buyback.* This section contains the policies and procedures pertaining to the Farmer Programs Leaseback/Buyback Program. The Farmer Programs Leaseback/Buyback Program will permit the previous owner of real property that was security for a Farmer Programs loan(s) to have the first opportunity to lease or purchase that property from FmHA. If the previous owner is not interested in leasing or purchasing the property, perference for leaseback/buyback will be given to the spouse and/or child(ren) of the previous owner who are actively engaged in farming (if the previous owner was an individual); entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and the immediate previous family-size operator (lessee). CONACT property that is acquired on or after January 6, 1988, that secured an FmHA loan will be considered for leaseback/buyback under this Section. CONACT property acquired prior to January 6, 1988, will also be considered under this section, but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA's Homestead program, priority will be given to the application for homestead protection with respect to the lease of the borrower's principal dwelling. The same applicant may be considered for both leaseback/buyback and homestead protection if requested. The applicant can obtain homestead protection under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program. The authorities contained in this section supplement Subparts A, B and C of Part 1955 of this chapter and provide information that is necessary to administer the leaseback/buyback program. Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over the reservation in which such real estate is located is treated differently than real property located outside a reservation. See § 1955.66(d) of Subpart B of Part 1955 of this chapter for further details.

(1) Notification

(i) When a borrower(s) becomes at least 180 days delinquent on an FmHA loan(s), the borrower will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Loan Service Programs by sending Attachments 5 and 6 of Exhibit A of this subpart. If a borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA the net recovery value of the property, the borrower will be advised by use of Exhibit K with Attachment 1 of this subpart that FmHA will continue with the processing of Preservation Loan Service Programs unless the borrower returns Attachment 1 of Exhibit K within 15 days of the date of the Exhibit.

(ii) When FmHA acquires a farm property, the former owner will be sent Exhibit O of this subpart within 30 days. The former owner has 180 days from the date FmHA acquires the farm, to apply for leaseback/buyback, unless State law provides for a longer period. The Exhibit will be sent certified mail, return receipt requested. If the former borrower/owner entered into a leaseback/buyback agreement (Exhibit N of this subpart) prior to FmHA acquisition of the real property, and such agreement has not terminated, Exhibit O will not be sent. The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback, the owner's spouse or children, if actively engaged in farming, may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition or a period longer than 190 days if applicable State redemption laws prescribes a longer period. If the owner was an entity and the owner is not interested in leaseback/buyback, the notification letter will inform the owner it will be the responsibility of the owner to inform the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition or a period longer than 190 days if State redemption laws prescribe a longer period. The notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to notify the County Supervisor of the name and address of that lessee. If the farm property is located within an Indian Reservation, and the former owner is a member of such Indian tribe, the Indian Tribe will be notified of the potential availability of the farm property for lease or purchase by sending Exhibit B of Subpart B of Part 1955 of this chapter. The Indian tribe will be notified at the same time as the previous owner.

(iii) If the previous owner provides FmHA with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee), the operator will be notified of leaseback/buyback by use of Exhibit P of this subpart. This letter will be sent Certified mail return receipt requested. The County Supervisor will send Exhibit P of this subpart to the operator (lessee) within 30 days after the 190-day period

or applicable period under State redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under State redemption laws if the previous owner, spouse and/child (if the former owner was an individual), and entity members (if the former owner is an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback of their intent to participate in leaseback/buyback.

(iv) The rights regarding the lease or purchase of property provided by this section and accorded a person or entity described above may be freely and knowingly waived by such person or entity. Exhibit Q of this subpart will be used by each person or entity that wishes to waive their rights to leaseback/buyback.

(2) Priority

(i) FmHA shall give priority for the leaseback/buyback program in the following order:

Priority 1. The immediate previous owner of the acquired property.

Priority 2. If actively engaged in farming:

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3. The immediate previous family-size farm operator of the security.

c. (If the farm property is located within an Indian Reservation and the former owner is a member of such tribe, see § 1955.66(d) of subpart B of Part 1955 of this chapter for leaseback/buyback rights of the Tribe.)

(ii) Within each of the foregoing priorities if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (e.g., one individual wants to purchase and the other individual wants to rent) priority within the category will be given to an individual who wants to purchase the security, either for cash or by credit sale. There is no preference for a cash sale over a credit sale; If there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), priority will be determined by the County Committee. The County Committee will make their selection as to which individual has the greatest need for farm income and who best meets the criteria for eligibility for a Farmer Program loan.

(iii) If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected.

(iv) The inventory property will not be leased or sold until any appeals are exhausted.

(v) The rights afforded individuals under the leaseback/buyback program will only be offered once after the property comes into FmHA inventory. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator lessee) leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the leaseback/buyback program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with Subparts B and C of Part 1955 of this chapter.

(3) Receiving applications

(i) Borrowers who return Attachment 2 of Exhibit A of this subpart and a completed application as outlined in § 1951.907(g) of this subpart will have their applications processed for Primary Loan Service Programs before considering the application for leaseback/buyback. The County Supervisor will automatically consider the borrower for Preservation Loan Service Programs if the use of Primary Loan Service Programs will not allow the borrower to develop a feasible plan of operation.

(ii) Borrowers who return Attachment 2 of Exhibit A of this subpart must also be the owners of the real property to be considered for leaseback/buyback. Such borrowers will also be advised by Attachment 5 of Exhibit A of this subpart of the availability of Preservation Loan Service Programs.

(iii) Former owners who wish to make application for leaseback/buyback must make applications within 180 days or applicable period under State redemption law after the date FmHA acquires the property. Such application will be made as outlined in § 1951.907(g) of this subpart.

(iv) The spouse or child of a former owner or entity members must make application for leaseback/buyback within 190 days or applicable period under state redemption laws after the date FmHA acquires the property. Such application will be made as outlined in § 1951.907(g) of this subpart.

(v) Operators must make application for leaseback/buyback within 30 days of receipt of Exhibit N of this subpart. Such application must be made as outlined in § 1951.907(g) of this subpart.

(4) Eligibility

The County Supervisor will determine the applicant's eligibility.

(i) Previous Owner. The individual(s) or entity that held title to the property at the time FmHA acquired the property. The previous owner, as an applicant for leaseback/buyback, may be an operator of larger than a family size farm and may be a different individual or entity than the former borrower.

(ii) Spouse and child(ren) of previous owner (if the previous owner was an individual). The spouse and/or any child(ren) who apply for leaseback/buyback must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family size farm.

(iii) Entity members (if the previous owner was an entity), must be a member of the entity, held exclusively by members of the same family and must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family size farm.

(iv) Previous operator must have been the operator (lessee) of the farm property at the time FmHA acquired the farm property from the former owner (lessor) and be an operator of not larger than a family size farm after execution of any lease or purchase agreement. The applicant does not need to be an FmHA borrower.

(v) All applicants must meet the application requirements of § 1951.911(a)(3) of this subpart.

(vi) If the County Supervisor determines the applicant is not eligible for leaseback/buyback, the applicant will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(5) Processing applications prior to acquisition of property

(i) An owner may apply for leaseback/buyback and/or Homestead Protection at any time before FmHA

acquires the owner's property. Such application must be in writing. If application is made for both leaseback/buyback and homestead protection, consideration will be given to both options and the borrower will be notified of both decisions simultaneously. The borrower will be allowed to retain possession and occupancy of the leaseback/buyback property while the application for leaseback/buyback is being processed.

(A) If the owner has requested leaseback, the County Supervisor will determine the owner can fulfill the terms and conditions of the lease. If the County Supervisor determines that the owner cannot fulfill the terms and conditions of the lease and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Supervisor determines that the owner can fulfill the terms and conditions of the lease, the County Supervisor and the owner will enter into a Leaseback/Buyback Agreement (Exhibit N of this subpart) to lease the property to the owner if and when FmHA acquires title. The lease will contain an option to purchase the property. A copy of the Form FmHA 1955–20, "Lease of Real Property," will be attached to the agreement as an exhibit. The agreement will provide that FmHA's obligation to enter into a lease/sale of the property is contingent on FmHA acquiring fee title to the property. The agreement will contain a provision that if the lease/sale does not close within 2 years from the date of the agreement, the agreement (and FmHA's obligation to lease/sell) will end.

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with Subpart A of Part 1943 of this chapter and the County Supervisor will determine the feasibility of the proposed operation before entering into the leaseback/buyback agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States:"

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale crrteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close.

(C) If the owner has requested buyback of the property as a credit sale on ineligible rates and terms, the County Supervisor will determine eligibility and feasibility before entering into the leaseback/buyback agreement. If the County Supervisor determines that the owner is not eligible, that the purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Supervisor determines that the owner is eligible for a credit sale on ineligible rates and terms, when the security is taken into inventory, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955–45:

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA acquires title to the security and any other contingencies are satisfied.

(D) If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA 1955–45 with the owner subject to the following contingency which will be inserted in Form FmHA 1955–45:

FmHA's obligation to close the sale is contingent on its acquiring title to the property within 2 years from the date of the agreement.

(ii) If the owner has requested leaseback/buyback of the real property, FmHA may as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA and immediately lease or credit sale the real property back to the former owner. FmHA may credit sale all the chattel property back to the former owner. These agreements are subject to the following items being concluded before completing any transaction:

(A) Based on the market value of the property and FmHA's potential recovery value, it is determined to be in the Government's best interest to acquire title to the property. Exhibit G of Subpart A of Part 1955 of this chapter will be used to determine if it is in the Government's best financial interest to accept the voluntary conveyance.

(B) Any remaining debt after conveyance of the chattel and of real estate property will be debt settled in accordance with Subpart B of Part 1956 and Part 1864 (FmHA Instruction 456.1) of this chapter.

(C) The County Committee determining that the former owner is eligible for any proposed credit sale on eligible rates and terms.

(D) The County Supervisor determining that the former owner has repayment ability and creditworthiness for a credit sale or sufficient experience, management skills, financial resources to assure a reasonable propsect of success in the farming operation for leaseback.

(E) If the property contains wetlands, floodplains, and/or highly erodible land, necessary deed retrictions will be placed on the property as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter.

(iii) All transactions involving a voluntary conveyance, leaseback/buyback and/or homestead protection will be executed simultaneously.

(6) *Processing leaseback requests.* The applicant must furnish the necessary financial information, as set forth in section 1951.907(g) of this subpart, to assist the County Supervisor in determining if a feasible plan of operation can be developed. If the County Supervisor determines the applicant can meet the terms of the lease and has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operations, the County Supervisor may approve the lease on Form FmHA 1955–20.

(i) The term of the lease may be from 1 to 5 years. The lessee will select the term of the lease. Leases may be for cash or crop share. If the lessee is able to pay the cash lease payment at the time the lease is executed, a feasible plan is not required.

(ii) All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be

set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the lower of the capitalization value or market value at the time the option is exercised as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report—Farm Tract." The option to purchase may be exercised any time during the term of the lease. All options expire when the lease term ends.

(iii) Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. Prior to entering into a leaseback/buyback agreement, the County Supervisor will advise the applicant by letter, of the rent amount. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with Subpart B of Part 1900 of this chapter.

(iv) The lease payments will not be applied toward the purchase price.

(7) *Processing buyback request.* The applicant must furnish the necessary financial information in accordance with § 1951.907(g) of this subpart to assist the County Supervisor in determining if the applicant can meet the terms of any purchase agreement. If the applicant has requested the property to be financed with a credit sale, a determination will need to be made if the applicant has sufficient experience, management skills and financial resources to assure a reasonable prospect of success.

(i) Title clearance and loan closing will be handled in accordance with 7 CFR Part 1807 (FmHA Instruction 427.1) and the terms specified in Form FmHA 1955–49.

(ii) The purchase price will be the lower of the capitalization value or market value as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form 422–1. If there is more than a 5 percent difference between the capitalization value and the market value, the appraisal will be reviewed by the State Director's designee. The reviewer will determine if the appraisal values are adequately supported.

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with Subpart A of Part 1943 of this chapter) and a credit sale processed in accordance with Subpart C of Part 1955 of this chapter or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with Subpart A of Part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in Subpart A of Part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

(8) *Special provisions.* The County Supervisor must take into consideration the following provisions:

(i) *Subdividing property.* The rights afforded an individual or entity under FmHA's Leaseback/Buyback program are for the total farm property. Farm property will not be subdivided for lease or purchase for such persons or entity. If the property is larger than a family-size farm, and no person or entity exercises leaseback/buyback rights, the property will then be subdivided and sold in accordance with Subpart C of Part 1955 of this chapter.

(ii) *Contingeny for Homestead Protection.* If the inventory property selected for leaseback/buyback wants to lease or purchase is subject to Homestead Protection rights by someone other than the selected individual, FmHA's obligation to enter into the lease or close the sale will be contingent on FmHA's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The Homestead Protection property must be a separate parcel. The Homestead Protection property will be excluded from the leaseback/buyback property. If necessary, FmHA will grant and/or retain for the benefit of adjoining property, reasonable easements for ingress, egress, utilities, water rights, etc.

(iii) *Wetlands, floodplains and/or highly erodible land.* If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA of its presence and location, along with the USDA restrictions regarding its use, as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is "highly erodible land," as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/leasee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the leaseback/buyback program.

(iv) *State laws and State supplements.* In the event of any conflict between any provisions of the FmHA leaseback/buyback program, as outlined in this Section and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of the Office of the General Counsel as necessary, to provide guidance to FmHA officials as to how to comply with the State laws. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (Available in any FmHA office).

(v) *Appeal rights.* Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the leaseback/buyback program, are appealable pursuant to Subpart B of Part 1900 of this chapter.

(vi) *Other provisions.* For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to Subparts A, B and C of Part 1955 of this chapter.

(b) *Homestead Protection.* This paragraph contains the policies and procedures pertaining to the Farmer Program Homestead Protection Program. The Homestead Protection Program is a "Preservation Loan Service Program" as

set forth in this Subpart. A borrower or former borrower who had or has a Farmer Program loan secured by the real property containing the dwelling which was used as the borrower's principal residence may apply for Homestead Protection before or after FmHA acquires the property. Farm real property that is in FmHA inventory as of the effective date of this regulation or is acquired in the future that secured a Farmer Program loan to individuals or entities will be considered for Homestead Protection as set forth in this subpart. If there is a conflict between applicants for Leaseback/Buyback (see § 1951.911(a)) and Homestead Protection, priority will be given to the application for Homestead Protection. An applicant can apply for both Homestead Protection and Leaseback/Buyback at the same time. The applicant can obtain the Homestead Protection property under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit a borrower or former borrower who is eligible for Homestead Protection to retain their dwelling through a lease and/or purchase. Such lease and/or purchase could permit a borrower or former borrower to have a home which could be a headquarters which could provide an opportunity to continue to farm and reestablish a feasible farming operation.

(2) *Notification and Processing.* When a borrower(s) becomes at least 180 days delinquent on FmHA loan(s), the borrower will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Service Programs by sending Attachments 5 and 6 of Exhibit A of this subpart. If the borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA the net recovery value of the property, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart, that FmHA will continue with the processing of Preservation Service Programs. A borrower who desires to apply will request homestead protection in accordance with the provisions of § 1951.907 of this subpart before the property is acquired and paragraph (b)(2)(iii) of this section after the property is acquired. A borrower who desires to participate in the program must request Homestead Protection by applying in accordance with § 1951.907 (g) of this subpart or paragraph (b)(2)(iii) of this section. The borrower will be allowed to retain possession and occupancy of the homestead protection property while an application for Homestead Protection is being processed. A borrower who meets the eligibility requirements in paragraph (b)(3) of this section will be permitted to retain possession of the homestead in accordance with paragraph (b)(2)(ii) of this section before title is acquired or under a lease with an option to purchase after title to the property is acquired.

(i) *General.*

(A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The County Supervisor will review the borrower's proposed homestead protection property and will make a physical inspection of the property, if necessary. If the County Supervisor does not agree with the proposed shape or size of the property, the County Supervisor and borrower will agree on an alternate size and shape for the property.

(C) If the borrower and the County Supervisor cannot agree on the proposed shape and size of the property, the County Supervisor will make the determination. The borrower may appeal pursuant to Subpart B of Part 1900 of this chapter.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible by the County Supervisor, the County Supervisor will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(7) and (b)(8)(ii)(B) of this section.

(ii) *Processing Homestead Protection Before FmHA Acquires Title.*

(A) A borrower will be considered for eligibility for Homestead Protection when it is determined that the Primary Loan Service Programs cannot help. Exhibit K with Attachment 1 of this subpart will be sent to the borrower. The borrower must return Attachment 1 and indicate the buildings and land to be included in the request for homestead protection in order to continue the processing of his/her application. If the County Supervisor determines the borrower is eligible for Homestead Protection, the County Supervisor and the borrower will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the Homestead Protection property to the borrower if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property," will be attached to the Agreement as an Exhibit.

(B) The Agreement will provide that FmHA's obligation to enter into a lease of the Homestead Protection property is contingent on FmHA acquiring fee title to the Homestead Protection property.

(C) FmHA's obligation to lease the dwelling to the borrower will also be contingent on FmHA's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. The Agreement will contain a provision that if FmHA cannot satisfy the foregoing conditions within 2 years from the date of the Agreement, the Agreement (and FmHA's obligation to lease with option to purchase) will end and the account will be accelerated or acceleration continued..

(iii) *Application for Homestead Protection After FmHA Acquires Title.* When FmHA acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, within 30 days from the acquisition date. The borrower must request Homestead Protection by notifying the County Supervisor in writing not later than 90 days after FmHA acquires the property. The borrower must give the County Supervisor the information set forth in § 1951.907 (g) of this subpart and indicate the buildings and land to be included in the request for Homestead Protection.

(iv) *Lease with Option.* A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA 1955–20 after FmHA acquires title to the property. Form FmHA 1955–20 will be completed in accordance with § 1951.911 (b)(8) and the FMI.

(3) *Eligibility.* The County Supervisor will make the determination on eligibility. In order to qualify for homestead potection the borrower must meet the following eligibility requirements:

(i) An applicant for Homestead Protection must be an individual who is or was personally liable for the Farmer Program loan that was secured in part by the Homestead Protection property.

The applicant must also be or have been the owner of the Homestead Protection property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for homestead protection was a member of the entity and was personnally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program loan that is or was secured by the homestead protection property is considered an owner for homestead protection purposes.

(ii) When more than one member of an entity was personally liable for a Farmer Program loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for a Farmer Program loan, may apply separately for hometead protection of their individual dwellings.

(iii) The applicant and any spouse must have received from the farming or ranching operations gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. For the purpose of this subparagraph and subparagraph (iv) below, income from farming or ranching operations will include rent paid to the borrower by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. In determining whether or not the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions, the borrower's records will be anayzed. When the borrower applies for homestead protection the borrower will give the County Supervisor at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and County Supervisor from information relating to yields, expenses and prices found in the borrower's County Office case file, ASCS records or other reliable sources.

(iv) The applicant and any spouse must have received from the farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calender years preceding the calendar year in which the application for Homestead Protection is made.

(v) The applicant must have continuously occupied the Homestead Protection property during the 6-year period preceding the calender year in which the application is made, unless the applicant had to leave the property for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment or conditions that made the dwelling uninhabitable.

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition. The applicant must also agree to all the terms and conditions set forth in § 1951.911 (b)(8) of this section and in Form FmHA 1955.20.

(4) *Transfer of Homestead Protection Rights.* The applicant's rights to Homestead Protection and rights under the Agreement or lease entered into pursuant to this section *are not* transferable or assignable by the applicant or by operation of law, except that in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

(5) *Appeal Rights.* If the County Supervisor determines that the applicant is not eligible for Homestead Protection or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition, the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded.

(6) *Property Requirements.*

(i) The proposed Homestead Protection property tract must meet all requirements for the division of the Homestead Protection property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of Subpart G of Part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by FmHA. Such costs will be handled in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office). No repairs or improvements will be paid for by FmHA except as provided for in § 1955.64(a) of FmHA Instruction 1955–B (available in any FmHA office).

(iii) If necessary, FmHA will grant and/or retain for the benefit of adjoining property reasonable easement(s) for ingress, egress and utilities, water rights, etc.

(7) *Appraisal.* The current market value of the Homestead Protection property shall be determined by an independent appraisal made within six months from the date of the borrower's application for Homestead Protection. The applicant will select an independent real estate appraiser from a list of at least three appraisers approved by the County Supervisor.

(i) The County Supervisor will develop and maintain, in the County Office operational file, a list of at least 3 qualified independent appraisers. See § 1951.909(i)(3) of this subpart.

(ii) The cost of such an appraisal will be handled in accordance with paragraph (b)(6)(ii) of this section.

(iii) Independent appraisals are appealable.

(8) *Terms of the Lease and Exercising the Option.*

(i) All leases will have an option to purchase. Any reference to a lease for Homestead Protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form FmHA 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document in the case file, a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(B) Lease payments will be retained by the Government and remitted in accordance with FmHA Instruction 1951–B.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling retention property under this section. As soon as a lease payment is deliquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights

of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to Subpart B of Part 1900 of this chapter. The lessee will continue to occupy the dwelling under the terms of the lease during an appeal of the termination decision. FmHA will comply with all applicable State and local laws governing eviction from residential property.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase. This stipulation will be added to the lease. The act of an applicant exercising his or her rights under the leaseback/buyback program is not considered as interfering with the Government's efforts to lease or sell the property.

(ii) *Exercising the Option to Purchase.*

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed, written statement notifying FmHA that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option in the lease to purchase the property, the purchase price will be the current market value of the homestead protection property. The current market value will be determined by an appraisal in accordance with paragraph (b)(7) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(7) of this section.

(C) The homestead protection property may be sold for cash or financed with a credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property for cash or finance it through a credit sale from FmHA.

(D) If a credit sale is involved, the applicant must furnish the County Supervisor the information set forth in § 1951.907(g) of this subpart to assist in determining whether or not the applicant has adequate repayment ability.

(9) *Rates and Terms for a Credit Sale.* Terms for a credit sale of Homestead Protection property when the lessee is exercising the option to purchase and has qualified for a credit sale will not exceed 35 years with equal amortized monthly installments. No down payment will be required. The interest rate for Homestead Protection will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(10) *Closing.* A credit sale will be closed in accordance with Subpart C of Part 1955 of this chapter.

(11) *Conflict with State Law.* In the event of a conflict between a borrower's Homestead Protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(12) *State Supplements.* State supplements will be prepared with the assistance fo OGC, as necessary, to comply with State laws to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in Subpart A of Part 1965 of this chapter.

§ 1951.912 Mediation.

(a) *States With a USDA Certified Mediation Program.* The FmHA is requested to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties.

(1) FmHA shall participate in a USDA certified mediation Program, under the same terms and conditions as other creditors. Decisions will not be binding on FmHA unless approved by the representative assigned by FmHA in accordance with § 1951.912(a)(4) below.

(2) Mediation fees, if charged to FmHA, will be paid by completing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and submitting Form FmHA 2024–1, "Miscellaneous Payment System," for payment as a non-recoverable cost in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude the FmHA from granting Primary Loan Service programs to assist borrowers.

(4) The FmHA State Director will designate a representative, to represent FmHA in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA, to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA State Director will arrange for adequate training for representatives designated to represent FmHA in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower Attachments 5 and 6 of Exhibit A of this subpart.

(7) The FmHA State Director will develop a State supplement that describes how FmHA will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Mediation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional Office of General Counsel as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(b) *States without a certified mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA representative. State Directors are encouraged to contract for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes.

(1) When a mediator is available the County Supervisor will assist the mediator in scheduling a meeting with the borrower and all of the borrower's

undersecured creditors, holding a substantial part of the borrower's debt and encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmers in resolving their financial difficulties.

(2) When a mediator is not available the State Director will designate an FmHA representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. The term "creditors" shall only apply to those undersecured creditors who represent a substantial portion of the borrower's debt. State Directors will designate a representative, or FmHA employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) Duties of Designated FmHA Representative For Conducting a Meeting of Creditors. The representatives will:

(i) Schedule a meeting between the borrower and the borrower's undersecured creditors, holding a substantial part of the borrower's debt and encourage them to participate in such a meeting.

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties.

(iii) Inform the borrower and creditors concerning FmHA programs available to assist the borrowers.

(iv) Encourage the parties to utilize all available means to assist the borrower to overcome the financial difficulty.

(v) Advise, counsel, and facilitate the development of a debt restructure Agreement between the borrower and creditors which will permit the borrower to remain in farming.

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution.

(vii) Review the obligations of the participants, including but not limited to the following:

(A) The maintenance of confidentiality,

(B) Promote good faith discussions in an effort to reach agreement.

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation, the County Supervisor will proceed with processing and approval of the borrowers request for Primary Loan Servicing.

(5) When the FmHA representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached the FmHA representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating an agreement cannot be reached, Attachments 5 and 6 of Exhibit A of this subpart will be sent to the borrower.

(6) State Directors will provide the necessary training to insure that the FmHA representative has the necessary skills to effectively conduct a voluntary meeting between a borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude the FmHA from using debt write-down if it would result in a greater net recovery to FmHA than liquidation. Whenever the net recovery to FmHA will be greater using the write-down than to go through foreclosure, FmHA will use the write-down, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause, and a feasible plan of operation cannot be developed the County Supervisor will send the borrower Attachments 5 and 6 of Exhibit A of this subpart.

§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) Borrowers who entered into Net Recovery Buyout Recapture Agreements will have their recapture receivable accounts serviced as follows:

(b) The Finance Office will credit the borrowers account with the amount paid by the borrower (net recovery value). A recapture receivable account will be established in an amount equal to the difference between the net recovery value and the market value of the real estate security property as of the date the net recovery buyout agreement is signed by the borrower.

(c) The County Supervisor will establish a follow up to review the County real estate records every 6 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold the real estate property covered by the Agreement. The results of the review will be recorded in the borrower's County office case file. These reviews will end two years from the date of the net recovery buyout recapture agreement.

(d) If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due.

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower.)

(3) If the borrower fails to pay any amount due to FmHA as the result of a sale of the property, the account will be accelerated as set forth in § 1955.15 of Subpart A of Part 1955 of this chapter.

(e) The County Supervisor will issue Form FmHA 451–2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the Recapture Agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

(f) When the amount of the net recovery buyout has been paid and credited to the borrowers account, the borrower will be released from personal liability. The recapture agreements will be marked "satisfied at net recovery value" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in the usual manner.

(g) If the County Supervisor determines there is no recapture due, Exhibit B of the subpart will be prepared and sent to the Finance Office to credit the borrowers recapture receivable account with the amount of debt to be written off. Exhibit C will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

§ 1951.914 Servicing of Accounts Restructured Under Primary Loan Service Programs.

(a) Borrowers whose accounts have been restructured will be serviced as

provided for in § 1951.909 of this subpart.

(1) The County Office will input via the multifunction work station, an equity receivable account in the amount shown on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(2) The borrower's account will be credited with the amount of debt written down.

(3) Six months prior to the end of the shared appreciation Agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(4) The County Supervisor will establish a follow-up to review the County real estate records every 6 months starting from the date of the Shared Appreciation Agreement to determine if the borrower has sold the real estate property covered by the Agreement or transferred title to such property. The results of the review will be recorded in the borrowers County office case file.

(5) If the County Supervisor determines that the borrower has sold the real estate or transferred title, an appraisal of the real estate will be completed. If the appraisal indicates that there is a positive value between the current market value at the time the Shared Appreciation Agreement was signed and the current market value at the time the borrower conveyed the real estate or transferred title, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(i) The amount of recapture due.

(ii) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower.)

(iii) Appeal rights as set forth in Subpart B of Part 1900 of this chapter.

(iv) If the borrower appeals the current market appraisal, cost of a new appraisal will be shared equally by FmHA and the borrower. The borrower will select an appraiser from the list of FmHA approved appraisers. The selection of the appraiser must be made by the borrower within 15 days of the receipt of the recapture due letter by the borrower.

(v) The appeal of the recapture amount due will be concluded prior to any further action by FmHA.

(vi) If the borrower does not appeal within 30 days or does not pay the amount, the FmHA will proceed as set forth in §1951.907(g) of this subpart.

(b) Servicing Shared Appreciation Agreements. Recapture of any appreciation will take place at the end of the term of the Agreement, or sooner if the following occurs:

(1) On the conveyance of the real security property by the borrower; however, transfer of title to the spouse of the borrower on the death of such borrower, will not be treated by FmHA as a conveyance. Recapture will take place, if the surviving spouse conveys the subject property or at the end of the recapture Agreement, whichever comes first.

(2) On the repayment of the loans;

(3) If the borrower/spouse ceases farming operations; or

(4) Five months prior to the end of the Shared Appreciation Agreement. The County Supervisor will inform the borrower by letter of the following:

(i) The date the recapture is due.

(ii) The borrower must select an FmHA approved appraiser from the list provided to establish the current market value of the property subject to recapture.

(iii) The cost of such appraisal to be shared equally by FmHA and the borrower.

(iv) The borrower must inform FmHA of the appraiser selected within 15 days from the date of the letter indicated in paragraph (b)(4) of this section.

(c) Procedures for Recapture at the End of Shared Appreciation Agreement:

(1) The borrower will be notified by certified mail, "return receipt requested" of the recapture amount due and payable. This notification letter will also include the recapture calculations and appeal rights. If the borrower cannot obtain satisfactory financing to pay the recapture, the amount to be recaptured will be added on the principal of the note and the note will be reamortized over the remaining life of the loan(s) at the applicable rate of interest. If the borrower is financially capable of paying the recapture, as determined by the FmHA County Committee and the payment is not made by the borrower within 180 days from the date due, the borrower's account will be treated as delinquent and FmHA will send Attachments 1 and 2 of Exhibit A of this subpart.

(2) The County Supervisor will issue Form FmHA 451–2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the recapture Agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

(3) When the full amount of the shared appreciation and the remaining FmHA indebtedness have been paid and credited to the borrowers account, the borrower will be released from personal liability. Notes evidencing debts and shared appreciation agreements will be marked "paid in full" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in the usual manner.

(4) If the amount of recapture due is not equal to the amount of the borrowers recapture receivable account, Exhibit B of this subpart will be submitted to the Finance Office to credit the borrowers account with any amount of remaining debt to be written off.

(5) If the County Supervisor determines there is no recapture due, Exhibit B of the subpart will be prepared and sent to the Finance Office closing the borrowers recapture receivable account.

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator; or upon request initiated by the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.917 FmHA Debt Restructuring Support Teams (DRST).

(a) *State Office DRST.* Each State Director shall form DRSTs to be deployed when unusually large numbers of Primary and Preservation Servicing applications are received. DRSTs shall assist in expediting the processing of both Primary and Preservation Loan Service Program Applications.

(1) State Directors shall use the DRSTs formed in their State(s) and all other FmHA personnel within their States(s) in processing Primary and Preservation Loan Service Applications.

If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request assistance.

(2) Upon request of a State Director, the Administrator, will consider detailing DRSTs from other States to assist in processing Primary and Preservation Loan Service Applications.

(3) State DRSTs will consider of a team leader and team members, selected by the State Director.

(4) State DRSTs will be trained as follows:

(i) The National Office will participate in training meetings or workshops for DRST leaders as requested; and

(ii) States will be responsible for training and keeping the State team currently informed on all phases of processing applications for Primary and Preservation Programs.

(5) Each State Director will issue a State Supplement establishing a DRST for the State(s) under his/her jurisdiction. This Supplement will name the team leader and all members. A copy of this Supplement will be sent to the National Office, Attention: Assistant Administrator Farmer Programs.

(b) *National Office DRST Leaders.* The National Office will establish a cadre of DRST team leaders.

(1) National Office team leaders will be used as follows:

(i) Assisting State Directors in training of FmHA field personnel, other USDA personnel, and temporary personnel in the processing of Primary and Preservation Loan Service Program applications.

(ii) Assisting State Directors in the organizing and expediting of assistance to eligible applicants; and

(iii) Leading DRSTs in areas with an usually large volume of primary and preservation loan service Program applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of the processing of primary and preservation loan service Program applications.

§ 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).

The State Director will deploy DRATs on a continuing basis to monitor debt restructuring processing activities in order to minimize processing errors, especially in calculating net recovery and write-down calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs Staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and Auditors from the Office of Inspector General if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Offices. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure. The Assistant Administrator, Farmer Programs will monitor States quality control procedures.

§§ 1951.919–1951.949 [Reserved]

§ 1951.950. OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0133.

FmHA Instruction 1951–S

Exhibit A.—Notice of the Availability of Loan Service Programs For Delinquent Farm Borrowers

Note to County Supervisor:

This Exhibit will be sent to all borrowers who are at least 180 days behind schedule on their former program payments.

See § 1951.907 (a), (b) and (f).

Dear (Borrower's Name):

This notice is to inform you that you are seriously behind with your loan payments and to inform you of your options. Farmers who are more than 180 days late in making payments have several options.

I. Loan Service Programs Available

Primary loan service programs are intended to help change the debt so that you can continue farming and the FmHA will lose less on the money it loaned you.

Preservation loan service programs are intended to help farmers who may lose their land to FmHA to get their farmland and their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must motify FmHA within 45 days of getting this notice if you want these loan service programs.

How to Apply

Complete and return all the forms you get with this notice, including the signed Borrower Acknowledgement of the Notice of Availability of Primary and Preservation Loan Service Progarms, within the 45-day time limit.

How Soon Will You Know if You Qualify

FmHA has 60 days to process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan service programs options.

(2) A summary of preservation loan service programs.

(3) Copies of the forms you need to apply for services.

(4) Information on how to get copies of FmHA regulations.

(5) A discription of the FmHA appeals process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 45 Days?

FmHA will take steps to begin the acceleration of your loan. Acceleration of your loan is very severe. This means FmHA will take legal action to collect all the money you owe them.

FmHA will start foreclosure proceedings. They will repossess or take legal action to take any real estates, personal property, crops, livestock, equipment, or any other assests in which FmHA has a security interest. FmHA will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. FmHA may also take by administrative offset money which other federal agencies owe you.

Sincerely,

County Supervisor,
Farmers Home Administration,
United States Department of Agriculture

Attachment 1—Primary and Preservation Loan Service Programs Purpose

Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to either monetary or non-monetary default.

See § 1951.907 (a), (b), (e), (f) and (g).

Purpose

These loan service programs are to help you repay the loan and keep your farm property. This notice tells you:

(1) How to get more information

(2) How to apply

(3) Your appeal rights if you apply and are turned down

How to Get More Information

Ask at any county FmHA office for copies of the FmHA rules describing these programs. These rules must be given to you within 10 days.

Who Can Apply?

All "farmer program borrowers" who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation
Special Livestock
Rural Housing Loans made for farm service buildings
Economic Opportunity

You May Need Help in Applying.

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension what services are available in your state.

Note.—FmHA County Supervisors cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans and farm ownership loans with farm ownership loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FmHA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an operating loan (OL) or a farm ownership (FO) loan, it may be possible for you to get "limited resource loan interest rate." For OL loans, the limited resource loan rate is 3 percent below the regular rate. For farm ownership loans, the limited resource loan rate is between 5 percent and an amount that depends on what it costs the government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for the type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL or FO loans.

For information about current interest rates, contact the county FmHA office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the delay period.

The interest rate on a deferral loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the delay period will not be added to the principal of the loan. You must pay this interest in equal yearly payments for the rest of the loan term.

Note: You can only get a loan deferral if the FmHA decides options 1–4 will not work for you.

Note: FmHA Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

Note: Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture. The Secretary will reduce the debt by the value of the land or by the difference between the value of the land and the amount you owe, whichever is larger. The amount of land left after the set aside must be enough to continue the farming operation.

(6) Debt Write-Down

This means the debt you owe is reduced. FmHA can reduce both the principal and interest of the debt. The debt can be reduced to the recovery value of the property mortgaged to FmHA to get the loan. This property is called collateral. The recovery value is the value of the collateral minus all of the attorney, management, resale, and other expenses FmHA would have if they foreclosed on and sold the collateral. These expenses include payments on other loans against the collateral that FmHA would have to pay if it foreclosed and sold the collateral. The value of the collateral must be decided by a qualified appraiser.

In order to get debt write-down, you must show that you will have enough money to pay all of your living and farming operating expenses and scheduled debt payments. This includes making payments on the FmHA loan once part of the loan is written down. This means you must show that you have a feasible plan of operation. FmHA will never write down more of the debt than is necessary for you to show a feasible plan.

The write-down is used only when the loan servicing programs listed in programs 1–5 above alone will not be enough for you to show a feasible plan. If you get loan servicing, some of the principal and interest on your loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1–5 above.

II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

(1) You cannot repay your FmHA debt due to circumstances beyond your control. This means that you have had less money than expected due to such things as:

(a) A natural disaster, weather, or insect problems,

(b) Family illness or injury,

(c) Loss or reduction of off-farm income,

(d) Disease in your livestock,

(e) Low commodity prices and high operating expenses in your local area, or

(e) Other circumstances beyond your countrol; *and*

(2) You have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

Who Will Decide if You Qualify?

The FmHA County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA would get if they foreclosed and sold the collateral for the loan. To do this, the County Supervisor must decide whether you can pay at least as much as the "recovery value" explained above.

How Soon Will You Know?

Within 60 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

Can You Get Your Debts Written Down?

Only if FmHA will get as much or more by writing down part of your debt than it will get if it forecloses and sells the collateral for the loan.

Conditions of the New Agreement if You Qualify

You must sign a shared application agreement. The agreement asks you to:

- Repay a part of the sum written down.
- The amount depends on how much your real estate collateral increases in value.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA will ask you to repay part of the debt it wrote down if you do one of the following things:

(1) Sell or convey the real estate.

(2) Stop farming.

(3) Pay off the entire debt.

If you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years.

FmHA can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, it will ask you to pay only 50 percent of the increase in value. However, FmHA can never ask you to pay more than the amount of the debt they wrote down.

Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FmHA will help you try to get your other creditors to adjust your debts. This will be done by FmHA asking for mediation if your state has a mediation program approved by the Department of Agriculture. If there is no state mediation program, FmHA will try to set up a meeting with your other creditors and suppliers.

Date to Begin Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be adjusted. You must notify FmHA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Service Programs

Purpose

These programs apply when the primary loan service programs cannot help you.

Programs Available

(1) Homestead Protection. (Keeping your farm home.) You may keep or purchase or lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.

(2) Farmland Leaseback/Buyback. You can either lease the entire farm back or buy it back from FmHA.

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm and/or ranch must be similar to other comparable operations your size in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for the 6 years immediately before your application. This rule can be waived if you had to leave for less than 12 months *and* you had no control over the circumstances.

(4) If FmHA has already taken your property, you must apply with 90 days of the date FmHA took your property. (FmHA must notify you within 30 days of taking your property.)

How to Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FmHA reasonable rent. The rent prices FmHA charges you must be similar to comparable property in your area.

(2) You must maintain the property in good condition.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FmHA, FmHA will evict you and force you to leave. Before FmHA forces you to leave, they must let you appeal. FmHA must also follow the laws of your state.

NOTE: You can buy back your property at current market value at any time during the lease. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection.

V. How to Lease Back or Buy Back Farmland Property

Under certain conditions you may lease or buy back your entire farm. You can apply for the leaseback or buyback before FmHA gets title to your land, and you can apply after FmHA takes title.

How Long Do I Have to Decide?

If FmHA takes your farmland, you will have 180 days after FmHA takes it to apply to pruchase or lease your property. (Some states give you a longer time period.)

Who Can Apply to Buy or Lease Back?

(1) Buyback or leaseback rights apply to you, your spouse, or your children if they also have been actively involved in farming.

(2) Members of family-held corporations if the corporation had the loan from FmHA.

(3) Members of partnerships or joint operations who were responsible to pay the FmHA loan.

Note: You must notify your family of their right to lease or buy back. Your spouse and your children's rights exist only if FmHA takes the property into inventory.

Order of Rights to Buy or Lease Back

(1) The former owner has first right. His/her right to be considered will last for 180 days from the time FmHA gets title to the land.

(2) The owner's spouse or children or stockholders in family farm corprations. Their right to be considered will last for 10 days after the owner's ends.

(3) The operator, if he/she is not owner of the property and was operating the property when FmHA took it into inventory.

(4) Operators of family-size farms.

Note: If the land is on an Indian reservation and was owned by a tribe member, FmHA will make special offers to tribal members. FmHA will do this after the time period for owner/operator buyback has passed.

Who Can Qualify for Buybacks Financed by FmHA or Leasebacks?

(1) You must have enough financial and management skills to show you will be successful in the farming operation.

Note: If you get financing from someone other than FmHA, you do not need management skills.

(2) You must give FmHA a farm plan that shows you have a reasonable chance of being successful.

(3) The rent price must be based on reasonable rent for the same type of property in your area.

(4) The purchase price for the farmland must not be more than a price that reflects the amount of money you can make from the land by farming it. FmHA calls this the capitalization value.

VI. How to Apply for Primary and Preservation Loan Servicing

Forms to apply to primary and preservation programs

These forms should be included with this notice. If they are not, you can get these from your county office or as directed below.

Form number and title

(1) FmHA 410–1—Application for FmHA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA debt.)
(2) FmHA 410–8—Application Reference Letters
(3) FmHA 410–9—Statement Regarding Privacy Act
(4) FmHA 431–2—Farm and Home Plan
(5) FmHA 440–3—Request for Statement of Debts and Collateral
(6) FmHA 1910–5—Request for Verification of Employment
(7) FmHA 1924–1—Development Plan (if you are planning to make major changes in your farming operation)
(8) SCS–CPA–26—Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)
(9) Ad 1026—Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)

Note: For Homestead Protection only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm. Show the homestead site you wish to apply for.

Note: For Conservation Easement only, get the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

Time to Apply

You must complete all of these forms and get them to the FmHA office within 45 days from the date you received this notice. FmHA will not consider you for the loan service programs until it gets all of these completed forms.

VII. What Happens When You Are Not Eligible for Primary Loans Service Programs?

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her why. If you can make the necessary changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the County Supervisor.

You have the Right to Appeal.

(1) Appeal Hearing. If you do not convince the County Supervisor that you should get primary loan servicing, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA questions at the hearing. The appeal hearing is recorded, you can get a copy of the transcript of the hearing if you pay for the copying costs.

(2) Review. If you do not win at the appeal hearing, FmHA must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.

(3) Independent Appraisal. You may ask for an independent appraisal of your property in which FmHA has a security interest. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three names of appraisers. You must choose one of the three to do the independent appraisal.

You May Pay Off Your Loan at the "Recovery Value."

(1) Recovery Value. If the analysis of your debt shows that you cannot "cash flow" even if your debt to FmHA is reduced to the net recovery value of the collateral, the County Supervisor will send you a letter saying you can pay off the loan by paying the "recovery value" of the land and property used to secure the loan. The letter will tell you the "recovery value."

The "recovery value" is figured by subtracting from the fair market value of the collateral property all expenses FmHA would have to pay if it foreclosed and sold your property. These expenses include paying off other creditors who have an earlier security interest in the collateral, attorneys fees, administrative and management expenses, and taxes.

(2) Time Limit. If you want to pay off the loan at "recovery value," you must pay FmHA within 45 days of the date you receive the letter. If you appeal, the County Supervisor's decision not to give you primary loan servicing, this 45 days will not start until all of the appeals end.

(3) Cash. If you pay off the loan, you must pay in cash.

Consideration for Preservation Loan Service Programs.

You will be considered for preservation loan service programs if:

(1) You do not appeal or do not win your appeal, and.

(2) You do not pay off the loan at recovery value.

FmHA will consider you for preservation loan service programs after the 45-day time period you have to pay off the loan at recovery value.

Consideration for homestead protection and/or farmland leaseback/buyback. You will be considered for preservation loan service programs if you:

(1) Meet the conditions described above, and

(2) Agree to give FmHA title to your land at the time FmHA signs the written dwelling retention and/or farmland leaseback/buyback agreement with you. The written agreement will include the amount you must pay for rent, the number of years you can rent, and an option to buy.

FmHA may consider you for homestead protection and farmland leaseback/buyback on you real estate and, at the same time consider you for buyback of your equipment and any other non-real estate collateral at market value.

VIII. What Happens When You Are Turned Down for Preservation Loan Service Programs?

You Can Appeal

If FmHA decides that you cannot get homestead protection and/or farmland leaseback/buyback, you can ask for:

(1) A meeting with FmHA to discuss the decision, and

(2) An appeal hearing.

The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA decided not to give you homestead protection or farmland leaseback/buyback. That letter will give you 15 days to ask for a meeting with FmHA.

The Right to an Appeal Hearing

If you do not convince FmHA at the meeting to give them to you, FmHA will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback.

The Right to a Review

If you do not win the appeal hearing, FmHA must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

IX. What Happens if You Do Not Win the Appeal for Preservation Loan Service Programs?

FmHA will accelerate your loan account and call in the whole debt. They will stop allowing you to use any of your crop, livestock, and milk checks on which they have a claim to pay for living and operating expenses. They will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration FmHA may also take money by administrative offset, that is, money which other Federal Government agencies owe you.

FmHA will take this action unless you do one of the following things:

(1) Sell all the collateral for the loan at market value

(2) Convey (legally transfer) the collateral to FmHA

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you can apply for a debt settlement so that you will no longer be personally liable for your FmHA debt. You may re-apply for homestead protection and farmland leaseback/buyback if FmHA takes your land or home. You may reapply for these programs, even if you applied before and did not get one of these programs and were not successful on appeal.

Attachment 2

Note to County Supervisor:

This attachment will be provided to every borrower who requests, Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to monetary default.

See § 1951.907(a), (b), (c), (d) and (f).

Acknowledgement of Notice of Program Availability

I/We have been given a notice explaining the primary loan service programs and the preservation loan service programs.

The date on the notice was _____

This notice explained that FmHA programs are available to help me keep my property.

I/We ask FmHA to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA decides on my request.

_____

Signature

_____

Date

Attachment 3

Note to County Supervisor:

This attachment will be used to notify borrowers with non-monetary defaults, borrowers with both non-monetary and monetary defaults, and borrowers where a prior or junior lienholder is foreclosing.

See § 1951.907(g).

Notice to Borrowers With Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or That a Prior Lienholder or Junior Lienholder is Foreclosing

Dear (Borrower's Name):

FmHA has reviewed your loan account. Our record shows:

☐ You are now $_____ behind on your payments. This is a violation of your loan agreement.

☐ You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is $ _____

_____

(Describe property.)

☐ You have stopped farming or ranching. This is a violation of your loan agreement.

☐ A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

☐ You have _____

_____

(Insert reasons for proposed action.)

FmHA Will Accelerate Your Loans

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They may take by administrative offset money you are owed by other Federal agencies. They may take money owed you through lawsuits or any other unpaid loans.

Steps You Can Take Before FmHA Accelerates Your Loans

You can apply for the loan servicing programs described in Attachment 1. These are called Primary and Preservation Loan Service Programs.

Forms Attached to This Notice

You will find:

1) A summary of all primary loan service programs;
2) A summary of preservation loan service programs;
3) Copies of the forms needed to apply;
4) Advice on how to get copies of FmHA regulations;
5) A short description of the FmHA appeal process.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

How to Apply for Loan Servicing

Complete Attachment 4 and the forms included with this notice.

You must return these within 45 days of getting this notice.

Right to a Meeting

You have the right to meet with your FmHA County Official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the "Response to Notice of Intent to Accelerate and Notice of Borrower Rights.")

How to Ask for a Meeting

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your County Office. Do this as soon as possible. It is wise to call also to set up the meeting.

Note: If you ask for loan servicing, the request will be delayed until a decision on your loan servicing request is made.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs.

How to Ask for an Appeal

Check the box on Attachment 4 and mail it to your County Office within 30 days of getting this notice.

Note: If you do not check the box on the Attachment 4 to ask for Primary and Preservation Loan Servicing you will not be considered.

If you do not ask for a meeting you will not get one.

You may still appeal by asking for an administrative appeal on the attached form.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,

Farmers Home Administration,

United States Department of Agriculture.

Date: _____

Attachment 4

Note to County Supervisor:

This attachment will be included with attachment 3 when contacting a borrower about non-monetary default, non-monetary default and delinquency, and when a prior or junior lienholders is foreclosing.

See § 1951.907(g).

Response to Notice Informing Me of FmHA's Intent to Accelerate My Loan

Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate my loan which I received with this form.

I want to:

☐ 1. Request a meeting with the FmHA County Office.

My phone number is _____

I must return this form in *15 days.*

I understand I do not lose my right to appeal by asking for a meeting.

☐ 2. Be considered for *all* primary and preservation loan programs.

I must return this form in *45 days.*

☐ 3. Have an administrative appeal hearing. I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and give me more information.

I must return this form in *30 days.*

Date: _____

Signature: _____

(Sign here.)

Attachment 5

Note to County Supervisor:

This attachment is used when notifying borrower who returned attachment 2 of Exhibit A, that FmHA cannot provide the assistance requested with the Primary Services Programs.

See §1951.909(h)(3)(i) and (ii).

Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights

Name and Address

(Dear (Borrower's Name): You are not eligible for debt restructuring.

I. ☐ FmHA has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA at least

$_____ per year.

Note: The attached computer printout which summarizes FmHA's calculations based on your application.

II. ☐ FmHA has reviewed your application and your case file. You have broken your agreement with FmHA. Your Farm and Home Plan shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt payments if FmHA uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have broken your loan agreements with FmHA.

You have broken loan agreements with FmHA in the following way:

☐ You are $_____ behind in your scheduled loan payments.

☐ You have sold or gotten rid of property you used to secure the FmHA loan without proper approval from FmHA. This property is _____

_____

(Describe property.)

☐ You have stopped farming or ranching.

☐ You have _____

_____

III. FmHA Intends to Foreclose

FmHA will accelerate your loan because you are not eligible for primary loan servicing.

FmHA will take legal action to collect the money you owe.

FmHA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA loan;

(2) Foreclose and sell your real estate mortgaged to FmHA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FmHA.

IV. WHAT YOU CAN DO TO STOP FORECLOSURE

Before FmHA can take action against you, you can;

(1) Request a meeting with the FmHA county official.

If you disagree with FmHA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA official. The county official can explain the FmHA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section 1.

To ask for this meeting, check the box #1 on the "Response Form: (Attachment 6).

Time Limit: You must return the "Response Form" to the county FmHA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) Request an Appeal Hearing.

You may also request an appeal hearing to contest FmHA's decision. At the hearing you may challenge the ways FmHA says you broke your loan agreements. You may also challenge FmHA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA believes you cannot present a feasible plan.

You can appear at the appeal hearing and present witnesses and documents to support your position.

You may also ask for an independent appraisal of your property used to secure the FmHA load. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this

appraisal. FmHA will give you three names of appraisers to choose from. Check box # 3 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FmHA county official, you will be given a chance to appeal after this meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed "Response Form."

You may request both the meeting and the appeal hearing on the "Response Form." Check box # 2 on the "Response Form" to request an appeal hearing. If you ask for just the appeal hearing, you must return the "Response Form" to FmHA within 30 days of the date you received the letter.

(3) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restructed loan.

You [may] or [may not] buy out your FmHA loan(s) at the "recovery value" of the property securing the loan. The recovery value is $_____. The restructed loan[s] value is $_____.

Note: The attached computer printout which summarizes FmHA's calculations.

If you are eligible and pay the recovery value, FmHA will write off the rest of your debt. If you are elgible to pay the recovery value, FmHA will require you to sign a recapture agreement. This agreement would allow FmHA to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 2 years of the agreement. FmHA can never recapture more than it wrote off.

Time limit. If you are eligible and want to buy out your loan[s] at the recovery value, you must pay FmHA within 45 days from the date you received this letter. You must pay FmHA in cash, money order, or certified check.

If you appeal FmHA's decision, the 45-day period to buy out at recovery value will not start until all of the appeals are completed. Check box # 4 on the "Response Form" if you want to buy out at recovery value.

(4) Consider for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructing).] FmHA will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

Note to County Supervisor.

[1] Circle appropriate entry.

V. WHAT HAPPENS IF YOU DO NOT RESPOND?

If you do not respond to this letter by completing and returning the enclosed Attachment 6, "Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights," FmHA will accelerate or continue with acceleration of your FmHA debts. This is very severe action FmHA will take any of the actions listed in Section III above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,

Farmers Home Administration, United States Department of Agriculture.

Attachment 6

Note to County Supervisor:

This attachment will always be sent with Attachment 5.

See § 1951.909(h)(3)(i) and (ii).

Response to Notice Informing Me of FmHA's Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate or continue with acceleration my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

☐ 1) Request a meeting with the FmHA county oficial.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

☐ 2) Request an appeal hearing.

I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and to give me more information.

☐ 3) Request that an independent appraisal of my property that secures the FmHA loan(s).

I understand that I must pay for this appraisal. I understand that the appeal hearing officer will give me the names of three appraisers, from which I must choose one.

☐ 4) Buy out my loan(s) at the recovery value.

I understand that I must pay FmHA $_____ in cash, certified check, or money order. I understand that I must pay this to FmHA within 45 days of the date I received this letter or, if I appeal. I must pay within 45 days from the end of the appeal. I understand that if I pay this amount FmHA will write off the rest of my debt.

_____

Borower's signature

_____

Date

Attachment 7

Note to County Supervisor:

This attachment will be used to advise borrowers whose accounts have been accelerated but who DID NOT return attachment 2 of Exhibit A, that FmHA intends to continue acceleration of their accounts.

See § 1951.907 (a) and (b).

Notification of Continued Acceleration of Loans and Notice of Borrowers' Rights

FmHA will continue to accelerate your loan.

You can:

(1) Ask to sign over to FmHA all the property you used to secure your loan. FmHA will release you from liability when the debt is settled.

(2) Ask for a leaseback or buyback of your farm real estate once FmHA has taken it by you signing it over or foreclosure.

(3) Ask to keep your home after FmHA has taken it.

(4) Ask to pay in full within 30 days.

Dear (Borrower's Name):

FmHA intends to continue to accelerate your loan.

FmHA will take legal action to: foreclose on real estate; repossess personal property; take by administrative offset any money you are owed by other Federal agencies.

How to Avoid Foreclosure

You can avoid foreclosure by:

Voluntarily signing over property you used to secure your loans to FmHA. FmHA will decide if it is to the government's financial advantage to let you do this. You must ask for a meeting with County Office staff in 15 days to discuss if your debt can be settled this way.

Note: Voluntarily signing over, or foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on _____. If you did not get these forms, contact your County Office within 15 days of this notice.]

What Happens If You Do Not Respond to This Notice

If you do not respond to this notice by asking for a meeting in 15 days, FmHA will take the legal action described above to foreclosure, or repossess your property.

Amount Owed:

You owe:

$ _____

unpaid principal

$ _____

unpaid interest

plus

$ _____

per day interest for each day after

_____

(Date)

plus

$ _____

advance made by the U.S. Government.

Time Limit:

You must pay all of your debt within 30 days of the date on this notice. This can be avoided if you sign over your property.

How to Pay

Cashiers' check, certified check, or postal money orders made payable to:
Farmers Home Administration at

_____

Street address or P.O. box

_____

City

_____

State

_____

Zip

Part payment will not be enough to stop FmHA taking legal action. FmHA still has full legal rights to continue the legal action just as if no payment had been made.

☐ The FmHA plans to go ahead with foreclosure on your property without court action. Public sale will be after

_____

(Date)

☐ The FmHA plans to go ahead with foreclosure on your property after court action.

Sincerely,

_____

County Supervisor
Farmers Home Administration
United States Department of Agriculture

Your Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national original, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Attachment 8

Note to County Supervisor:

This attachment will always be sent with Attachment 7.

See § 1951.907 (a) and (b).

Response to Notice Informing Me of FmHA's Intent to Continue to Accelerate My Loan

Notice of My Rights

TO: County Supervisor, Farmers Home Administration
From: _____

Please print your name and address.

I have read and considered the notice informing me of FmHA's intent to continue to accelerate my loan.

I want to:

☐ (1) Request a meeting with the FmHA County Official to discuss signing over my property used to secure my loan to FmHA to settle my debt.
My phone number is _____
I must return this form in 15 days.

☐ (2) Be considered for preservation loan programs.

Signature: _____
Date: _____

Attachment 9

Note to County Supervisor:

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated. WHO DID NOT return attachment 2 of Exhibit A.

See § 1951.907(h)(2).

Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights

FmHA will accelerate your loan because you have not asked for primary loan service programs or debt restructuring.

You can:

(1) Ask for a meeting with your County Official.

(2) Appeal FmHA's decision.

(3) Ask to voluntarily sign over to FmHA the property used to secure your loan and ask to be released from your debt.

(4) Apply to a leaseback or buyback of your farm real estate once FmHA has taken it.

(5) Ask to keep your home after the FmHA has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA, and a review of your account shows:

☐ You are $_____ behind in your FmHA loan payments.
This is a violation of your loan agreement.

☐ You have sold or gotten rid of property used to secure your FmHA loan. Your did not get written approval for this.
The property is _____

_____

(Describe property.)

☐ You You have stopped farming or ranching.
This is a violation of your loan agreement.

☐ You have _____

_____

(Insert reason for proposed action.)

FmHA Will Accelerate Your Loans.

This means FmHA will take legal action to collect the money you owe. Thy will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA Accelerates or Continues Aceleration of Your Loans.

(1) Right to a meeting. You have the right to meet with your FmHA County Official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your County Office. Do this as soon as possible.

(2) The Right to Appeal. You can ask for an administrative appeal before a hearing officer. Your can contest FmHA's decision to accelerate or continue acceleration of your loan. You can ask for a independent appraisal of the value of your land. You will have to pay for this appraisal. FmHA will give you three names of approved appraisers to choose from. Check box 4 if you want an independent appraisal. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. You can ask for an appeal if you do not have a meeting.

How to Ask for an Appeal. Check the box on Attachment 10 and mail it to your County Office within 30 days of getting this notice.

What Happens If You Do Not Respond?

If you do not respond to this notice by filing out Attachment 10, FmHA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. *But* you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on _____. If you did not get these forms, contact your County Office *within 15 days* of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

County Supervisor,
Farmers Home Administration,
U.S. Department of Agriculture
Dated: _____

Attachment 10

Note to County Supervisor:

This attachment will always be sent with Attachment 9.

See § 1951.907(h)(2).

Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue to Accelerate My Loan

Notice of My Rights

TO: County Supervisor, Farmers Home Administration
FROM: _____

(Please print your name and address.)

I want to:

☐ 1) Request a meeting with the FmHA County Official. My telephone number is _____. I understand I do not lose my right to appeal if I ask for a meeting.

☐ 2) Voluntarily sign over to FmHA all the property used to secure my loan and settle my debt.

☐ 3) Request an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to set up an appeal hearing and give me more information.

☐ 4) Request an independent appraisal of property securing my loan(s). I understand

I must pay for this appraisal. I understand that the hearing officer from the National Appeals Staff will give me names of three appraisers.

☐ 5) Preservation loan service programs.

Signed _____

Date _____

Exhibit B.—Noncash Credit for Farmer Program Loan When Establishing Recapture Receivable

In accordance with FmHA Regulation 1951-S, "Farmer Program Account Servicing Policies," 1965-A, "Servicing of Real Estate Security for Farmer Program Loans and certain Note-Only Cases," we have granted this borrower a noncash credit for the Farmer Program loan(s). In consideration for this noncash credit an equity receivable account will be established in accordance with the attached Net Recovery Buy Out Recapture Agreement, Shared Appreciation Agreement, or Equity Recapture Agreement signed by the borrower.

1. *Borrower Name* _____

2. Case Number ___:___:___:0:___:___:0:___:___:___

Net recovery value of property securing loan(s) $. _____
Amount of write-down $. _____
Amount of Account Equity $. _____

(Borrower's signature)

(Farmers Home Administration)

Exhibit E.—"Notification of Request for Mediation or Meeting of Creditors"

(TO BE USED BY FmHA TO INFORM BORROWERS THAT FmHA IS REQUESTING MEDIATION OR A VOLUNTARY MEETING OF THE BORROWER'S CREDITORS)

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FmHA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FmHA debts to make an annual payment to FmHA of at least $_____. Your Farm and Home Plan shows that you have only $_____ to make this annual payment. Attached are the calculations on which our decision is based.

(Use the appropriate following paragraph.)

Paragraph I

(To be used when Certified State Mediation is available)

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least $_____, FmHA will reconsider your application for primary loan servicing.

Paragraph II

(To be used when Certified State Mediation is not available)

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FmHA State Director will contract for a mediator or appoint an FmHA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Please sign the attached acknowledgment within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FmHA releasing information concerning your account to other creditors who participate in the meeting.

Note to County Supervisor

Send Attachment 1 to Exhibit E with Paragraph II only.

If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least $_____, FmHA will reconsider your application for primary loan servicing.

Sincerely,

COUNTY SUPERVISOR

Attachment 1.—Borrower's Request for Meeting of Creditors and Acknowledgment

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA has told me that due to my/our debt with other lenders it does not believe I/we can develop a feasible plan. I/we request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I/we consent to FmHA releasing information concerning my/our FmHA account(s) to these creditors to assist me in developing a feasible plan.

(Date)

(Borrower's signature)

Exhibit F.—Notification of Offer to Restructure Debt

(TO BE USED BY FmHA TO OFFER TO RESTRUCTURE THE BORROWER'S DEBT)

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA debt in the following fashion:

_____

_____

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account.) For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that ($ Amount) of principal and interest on that loan would be written off, and the remainder of the loan would be reamortized for 40 years from the original date of the loan, or up until (date) at the limited resource interest rate, which is _____ percent, in exchange for the borrower signing a shared appreciation agreement, which is attached to the notice.)

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

If you do not accept this offer, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FMHA RESTRUCTURES YOUR FmHA INDEBTEDNESS WITH A WRITE-DOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION ON THIS MATTER.

Sincerely,

COUNTY SUPERVISOR

Attachment 1.—Acceptance of Offer To Restructure My Debt

TO: County Supervisor, Farmers Home Administration

FROM: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA debt.

I would like to accept that offer.

Sincerely,

(Borrower's signature)

(Date)

Exhibit G.—Deferral, Reamortization and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans

I. General.

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA borrowers to improve their financial condition, to repay their outstanding FmHA debts in an orderly manner, to carry on a feasible farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) *Management assistance.* FmHA management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordance with Subpart B of Part 1924 of this chapter.

(B) *Definitions.*

(1) *Distressed FmHA loan.* An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) *Marginal land.* Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in § 12.2 of Subpart A of Part 12 of this chapter and which is

Attachment 1 of Exhibit M of Subpart 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under § 12.2 of Subpart A of Part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Class IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in § 12.2 (a)(26) of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(3) *Softwood timber.* The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(c) *ST loan eligibility.* A borrower must:

(1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

(2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

(3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

(4) Be an FmHA FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

(5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

(6) Have one or more distressed FmHA loans as defined by this exhibit.

(7) Not have a total indebtedness of ST loan(s) that will exceed $1,000 per acre for the marginal land at closing. Example: If 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed $50,000 at closing.

(8) Be able to obtain sufficient money through FmHA or other sources including cost-sharing programs for forestry purposes for the planting, caring, and harvesting of the softwood timber trees.

II. *Reamortization requirements.*

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

(1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by Subpart B of Part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA denial, as provided in § 1951.909(i) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this subpart.

(2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest $1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the $1,000 per acre specified in paragraph I (C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

(3) When a loan is reamortized the accrued interest more than 90 days overdue will be capitalized. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII (B) of this section. If income is available, payments will be required as determined in paragraph II (B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX (H) of this exhibit.

(4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA 440–9, "Supplementary Payment Agreement."

(5) Applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be cancelled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

(D) If the total amount of the distressed FP loan(s) exceeds $1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed $1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA State supplement allows otherwise. The mortgage must ensure that FmHA has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with Subpart A of Part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

III. *Interest rate of ST loans.*

See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate (available in any FmHA office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

IV. *Special requirements.*

(A) *Size of the timber tract.* The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) *Graduation of ST borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA request, apply for and accept such financing.

V. *Planning.*

A farm plan will be completed as provided in Subpart B of Part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in

establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

VI. *Distressed reamortized loan approval or disapproval.*

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. "Administrative Notices" containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA Finance Office will be notified by the County Supervisor by completing Forms FmHA 1965–22 and 1965–23 for entry into the field office terminal system.

VII. *Reamortizing disapproval.*

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in § 1951.909 (i) of this subpart after the County Supervisor has determined whether the borrower is eligible for the remaining servicing programs authorized by this subpart.

VIII. *Processing of ST loans.*

(A) If the reclassified ST loan is approved, all other FmHA loans must be current on or before the date the reclassified ST notes are signed except for FmHA-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA 1940–18, "Promissory Note for ST Loans," will be used for ST loans. Form FmHA 1940–17, "Promissory Note," will be used for any remaining portion of a split distressed loan. The forms will be completed, signed and distributed as provided in the Forms Manual Inset.

(D) The County Supervisor will determine the amount of interest more than 90 days overdue that will be added during the deferral period for softwood timber loans. This interest will be repaid in equal payment amounts during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment amounts for the remaining period of the loan. Interest less than 90 days past due will not be capitalized or accrue interest. It will be payable at the end of the softwood deferral period. The Forms Manual Inset (FMI) for Form FmHA 1940–17 has examples (IV, V, and X) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with this subpart.

(E) The following addendum will be typed and signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA liens in accordance with paragraph II (E) of this exhibit.

IX. *Servicing.*

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in § 12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with Subpart A of Part 1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. *Any appeal to FmHA must be concluded before any adverse action can be taken on the loan.*

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

(1) The timber is not harvested in the year stated in the initial promissory note, and

(2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

S. *State supplements.*

State supplements will be issued immediately and updated as necessary to implement this section.

Attachment 1—Notice of Availability of Option To Reamortize Certain Loans Secured by Future Revenue Produced by Planting Softwood Timber

(Used by the County Supervisor to inform borrowers of the availability of Softwood Timber Loans)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(Name and Address)

Dear _____:

To implement a provision in the 1985 Farm Bill, the Farmers Home Administration (FmHA) is offering the additional loan servicing option of reamortizing Farmer Program loans with repayment secured by and postponed until the harvesting of a Softwood timber crop. Eligible applicants may request or receive an operating loan to cover the actual cost of the required planting. If you are using marginal land for farming or pasture, and desire to use at least 50 acres of this marginal land to plant and produce softwood timber, contact this office within 15 days of the receipt of this letter to apply for this option so that your request can be processed in a timely manner. Please note the following limitations to this program: FmHA

must be the sole lienholder of both the land growing the softwood timber and the revenues from the timber; the total amount of loans secured by the land and softwood timber cannot exceed $1,000 per acre; and the program is limited to 50,000 acres of softwood timber nationwide.

Sincerely,

County Supervisor

Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements)

I. General.

A conservation easement will be considered with write-down as a primary loan service program in accordance with §§ 1951.906 and 1951.909 of this subpart and the requirements of this exhibit. These easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved and, except in the case of wetland and wildlife habitat as defined in paragraphs (a) and (d) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. This section only applies to farmer program loans closed prior to December 23, 1985. Non-program loan debtors are not eligible to receive any benefits under this section. Conservation easements do not have to result in a net recovery to the government at least equal to the recovery from liquidation. If the borrower initially declines an easement but the debt write-down program fails to establish a feasible plan, the borrower will be considered for a Conservation Easement combined with debt write-down to determine whether these options establish a feasible plan.

Definitions.

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) "Wetland," except when such term is part of the term "Converted wetland," is land that Soil Conservation Service (SCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) "Hydric soils" means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) "Hydrophytic vegetation" means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) "Highly erodible land" is land that SCS has determined has an erodibility index of 8 or more.

(c) "Upland" is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land and/or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation easement areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas,

(viii) Area that SCS determines contains soil(s) that is generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the SCS's Land Capability Classification System.

(d) "Wildlife habitat" is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegatation, and soil characteristics.

(2) *Enforcement authority.* Any agency of the United States, a State, or a unit of local Government of a State or a person that is designated by FmHA and specified within an easement area to enforce the terms and conditions of that easement.

(3) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement and/or its management plan. The borrower whose land is subject to the easement may be eligible to be designated as a management authority.

(4) *Person.* Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(5) *Recreational purposes.* These activities include providing public use for both consumption (e.g., hunting, fishing) and noncomsumption (e.g., camping, hiking) recreational activities, a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise(s).

(6) *Row Cropped.* The term refers to growing agricultural products, including small grains, by the annual tilling of the land (including one trip planters and sugar cane). This farming approach refers to land that was in grasses and/or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural product or to conserve soil and water.

(7) *Wildlife.* The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(8) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. *Eligibility.*

The following steps must be taken to determine if the borrower is eligible for a conservation easement. If the borrower is found to be ineligible, the FmHA County Supervisor will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the easement after a final decision is made on whether the borrower qualifies for any other servicing options. The County Supervisor must find that:

(1) The borrower owns real estate which secures a farmer program loan which was closed before December 23, 1985;

(2) The borrower is or would be unable to repay the FmHA loan(s) without the easement agreement. This decision will be made by the borrower's submission of a plan of operation acceptable to FmHA for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(3) The establishment of the value of an easement, in terms of the approximate amount of acres that may qualify, and in combination with other servicing options, if applicable, has the potential to allow the borrower to be current in payments, i.e., the easement approach is worth exploring in further detail;

(4) The proposed easement land except in the cases of wetland and wildlife habitat was row cropped each year of the three-year period ending on December 23, 1985; and

(5) If the land being proposed for the easement is within the Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program, both

the requirements of that program and this section can be met.

III. *Establishing easement review team.*

The County Supervisor will establish an easement review team by notifying the appropriate field offices of the Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation District, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resources Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

IV. *Responsibilities of the Easement Review Team.*

SCS will lead the easement review team which in every case will be composed of an SCS and FmHA representative (and in the case of wetlands, the U.S. FWS), plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder(s) and the borrower will be informed of the site visit time/date and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the County Supervisor. The report will cover the items listed in paragraphs (A) through (F) of this paragraph. The report will be prepared by an organization, selected by FmHA, that has indicated its willingness to be the enforcement authority except in the instance discussed in paragraph (C) below. Whenever review team members have differing positions on any items to be addressed in the report, each team member will prepare a separate report and submit these reports to the organizations responsible for the report. These differing views will be noted in the report. When no differences exist within the review team, written summaries of team members' positions need not be submitted to the preparer of the report unless either the preparer requested them or an individual team member desires to submit a report. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, easement boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable easement boundaries or are required for the efficient management of the easement's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation and/or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked. First, priority will be given to land easement opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land easements already established or under review within the local area and the intent of these easements has been established, the review team will consider these actions as purpose rankings are developed.

(C) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and will indicate this fact.

(D) If appropriate, any special terms or conditions that would need to be placed on the easement plus unique or important features of the property which would not be adequately addressed by the standard easement terms and conditions.

(E) A proposed management plan consistent with the purpose or purposes for which the easement would be established. The management plan will outline the various management alternatives for the proposed easement. The enforcement authority's eventual selection of the alternative(s) to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the easement. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and provide supporting reasons for the recommendation(s) made. Whenever changes are required in the management plan, the enforcement authority, with the concurrence of FmHA, may update the management plan to reflect the changes.

(F) The recommended term length of the easement. See paragraph VI of this exhibit.

V. FmHA's review of easement team's report.

Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land, or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower of the reason(s) that the easement has been denied and that the borrower may appeal the denial of the easement. If the report is favorable to an easement and more than one qualified entity has indicated its desire to be an enforcement authority, the County Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies each want to be the enforcement authority, the County Supervisor will select the Federal agency that owns or controls property adjacent to the easement or the Federal agency whose mission or expertise best matches the priority use purpose(s) for which the easement would be established. In selecting between non-Federal entities, the County Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement during the proposed term of the easement.

VI. Terms of easements.

A conservation easement may be obtained for a period of not less than 50 years and a borrower cannot crop the easement land during the term of the easement. A longer period of time or a perpetual easement shall be established if the easement review team determines that there is justification for extending the conservation easement past the 50-year minimum. Justification will exist if the easement would:

(A) Contribute directly to achievement of benefits to species protected by international treaty (e.g. migratory birds);

(B) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened, endangered and/or candidate species;

(C) Serve as the site for wildlife habitat improvements which may be required to offset the unfavorable impact of a permit, license or project when improvements need to be longer than 50 years;

(D) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(E) Be desirable that property be removed from production for a long period due to the type of land; or

(F) Serve as a significant historical site, ground water recharge area or other significant eligible easement objective.

VII. Determining the amount of farmer program debt that can be cancelled.

(A) *Calculate the amount of debt to be cancelled as follows:*

(1) *Step 1.* Determine what percent the number of easement acres is of the total acres of land that secures the borrower's farmer program loans by dividing the easement acres that secure the borrower's farmer program loans by the total acres that secure the borrower's farmer program loans.

(2) *Step 2.* Determine the amount of farmer program debt that is secured by the easement acreage by multiplying the borrower's total unpaid farmer program loan balance (principal, interest and recoverable costs already paid by FmHA) by the percentage calculated in Step 1.

(3) *Step 3.* Determine the current value of the land in the easement by multiplying the present market value of the farm that secures the borrower's farmer program loans by the percent calculated in Step 1.

(4) *Step 4.* Select the lesser of the values calculated in Steps 2 and 3.

(5) *Step 5.* Subtract the current value of the easement acres in Step 3 from the farmer program debt that is secured by the easement acres in Step 2.

(6) *Step 6.* Select either the value arrived at in Step 4 or 5, whichever is the greater.

An Example For Determining The Amount That Can Be Cancelled:

Situation

Total Acres, 300
Easement Acres, 60
Amount of unpaid farmer program debt secured by farm, $450,000
Current value of farm, $300,000
Step 1. 60 easement acres; 300 total acres=20 percent
Step 2. $450,000 debt x 20 percent, Step 1=$90,000
Step 3. $300,000 value x 20 percent, Step 1=$60,000
Step 4. Select the lower amount of Step 2 or Step 3 Calculations=$60,000
Step 5. $90,000 in Step 2—$60,000 in Step 3=$30,000, Amount FmHA is undersecured on Easement Land
Step 6. Select the greater of Step 4 or 5=$60,000
$60,000 of the debt would be the maximum amount available for the debt cancellation.

(B) *Feasibility of debt cancellation.* The County Supervisor will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum value as calculated in paragraph (VII) Step 6 of this section. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower of the reason that the easement has been denied and that the borrower may appeal this adverse decision after the County Supervisor has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(C) *Updating the title opinion.* Title examination will be the same procedure as provided for in § 1807.2 (a) and (b) of Part 1807 of this chapter (FmHA Instruction 427.1). A preliminary title opinion will not be required. The final title opinion will cover the period following the recordation of the initial loan mortgage. Title opinion costs will be considered nonrecoverable costs and will be paid by FmHA by completing and submitting a Standard Form 1034 and plus a Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024–P (Instructions and forms are available in any FmHA office).

(D) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the terms of the easement must be obtained in writing by the borrower. The consent will be filed in the borrower's case file and need not be recorded unless required by State law. No change in the terms can be proposed by the prior or junior lienholders. If it is not possible to obtain the lienholders' consent, the easement will be denied and the borrower so informed. The borrower will have no appeal rights for an FmHA denial on this basis.

(E) *Identifying the boundaries of the easement.* A professional survey of the easement's boundaries will be required. FmHA will provide this service by contracting for the survey in accordance with FmHA Instruction 2024–A, Exhibit J (available in any FmHA office).

(F) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining financial obligation, and the terms and conditions of the easement. The borrower also will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority, and the borrower by signing Form FmHA 1951–39, "Grant of Easement," if the enforcement authority is the U.S. Fish and Wildlife Service, or Form FmHA 1951–39A, "Grant of Easement," if the enforcement authority is other than the U.S. Fish and Wildlife Service, or a similar form approved by the Office of General Counsel (OGC). (These FmHA forms are available in any FmHA office.) A similar form may not contain provisions whose purposes conflict with the purposes of this regulation or with the terms of Forms FmHA 1951–39 or 1951–39A. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement review team must be consulted. If an agreement cannot be reached with the borrower on the easement's terms and conditions, the County Supervisor will notify the borrower in writing that the easement is denied and that the borrower may appeal this denial after the County Supervisor determines the borrower's eligibility for the other servicing options in this subpart.

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA 1951–47, "Farmer Program Noncash Credit for Purchase of Easement Rights," for entry into the FmHA field office terminal system. The borrower's loans that were closed prior to December 23, 1985, that are secured with the real estate on which the easement is obtained, will be credited with an amount not to exceed the established value of the easement acres. The amount credited will be applied on the FmHA loan(s) in order of priority of lien on the security and then on any other FmHA debts. The loan may be reamortized if needed.

(H) *Recording of the easement.* The County Supervisor will record Form FmHA 1951–39 or Form FmHA 1951–39A (or other acceptable form that has been approved by OGC) to comply with State laws. The County Supervisor then will retain a copy of the easement in the borrower's file and will provide a copy of the easement to the enforcement authority and to the borrower. Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA by completing a Standard Form 1034 and submitting Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024–P (Instructions and forms are available in any FmHA office).

VIII. Violation of terms and conditions.

If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.26(b) of Subpart A of Part 1965 of this chapter. The borrower will also be responsible for all costs incurred by FmHA and the enforcement agency in the course of enforcing such terms and conditions. Enforcement expenses may include attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to a condition compatible with conservation, recreational and wildlife purpose(s) for which the easement was established. Should the borrower wish to convey or sell the property subject to the easement during the term of the easement, the borrower must first notify the enforcement authority and the purchaser(s) will also be responsible for the same type of costs should the successor(s) violate the terms and conditions.

IX. Responsibilities of the enforcement authority.

The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilities and duties:

(A) Upon receipt of an FmHA approved easement, provide FmHA with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(B) Monitor compliance with the easement's terms and conditions.

(C) Ensure that the easement property is safely maintained to the extent required by relevant State law and accept all liabilities associated with implementing and carrying out its management responsibilities under the easement's terms and conditions and management plan.

(D) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority or the management authority, as agreed in that contract. Monitoring Compliance with the terms and conditions of the easement cannot be so delegated or contracted.

(E) For the first five years of the easement's life, report annually to FmHA on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. If circumstances develop which would result in substantial compliance problems or claims, or litigation involving the easement property, then the enforcement authority immediately must notify FmHA by certified letter.

X. Monitoring compliance.

The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in the easement's terms and conditions (Form FmHA 1951–39 and Form FmHA 1951–39A), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the County Supervisor. In order to provide the requested written authorization,

the County Supervisor must determine that the request does not violate the easement's terms and conditions and must receive the written concurrence of the enforcement authority. In reaching this determination, the County Supervisor should consult with the State Director and OGC, as necessary.

Exhibit I—Guidelines for Determining Adjustments for Net Recovery Value of Collateral

This Exhibit provides guidance to State Directors and County Supervisors for determination of the factors to be used in adjusting current market value.

State Director Responsibilities

The State Director's analysis and guidance to County Supervisors will specify costs which are determined to be consistent statewide, and provide specific guidance on the determination of costs which are somewhat consistent within the state but may vary on a County to County or property to property basis. All studies or surveys should be conducted so that all necessary information can be distributed at the same time.

A. *Real Estate Costs*

The analysis and guidance for liquidation and disposition costs should, as a minimum, address the following items and considerations:

(1) Management Costs. In situations where State or District wide contracts for management of inventory farms are in effect, the State Director will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no wide area contract rates for some or all counties, guidance should be given as to how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

(2) Local and Administrative Costs.

(a) The State Director will consult with the appropriate Regional Counsel in charge to determine the average amount of government attorney time involved in an involuntary liquidation. This time, in hours, will be multiplied by $75 per hour to arrive at the legal costs associated with involuntary liquidations.

(b) The FmHA Resource Management System (RMS) work standards (FmHA Instruction 2006–J, Exhibit A, available in any FmHA office) for liquidation actions should be used to determine the administrative costs associated with liquidation for each type of loan, as follows:

(RMS standard divided by 60) × hourly rate for GS–11/1 = administrative cost of liquidation. The administrative costs during inventory should also be derived from the RMS standards. It will be necessary to determine the average number of property management actions per month per property, and compute the cost as follows: (average actions per property per month × average holding period × (RMS standard for property management actions divided by 60) × GS–11/1 hourly pay rate) + (RMS standard for sale actions divided by 60) × GS–11/1 hourly pay rate = administrative costs for inventory period.

(3) Average holding period for suitable property. Normally, the average holding period will be determined to be the average months in inventory for suitable properties as derived from report code 597, Farmer Program Inventory. However, in situations where states have no suitable inventory, or have a very limited number of suitable properties for which the holding time is not representative, (i.e., one property held 75 months due to local litigation) the average of the holding periods of surrounding states should be used. National Office guidance may be requested in such cases.

(4) Resale Expenses.

(a) Commissions—A study will be conducted, at least annually, to determine the typical method for disposition of FmHA inventory farms in the state. The findings will be used to determine whether commissions should be included as resale expenses, or whether FmHA normally disposes of inventory farms without the assistance of brokers or auctioneers. However, if a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will *always* be included as a resale expense in that office. The percentage of commission will be the rate specified on the listing agreement(s) or contract(s) in effect for the County Office.

(b) Repairs—Guidance will be issued as to the kinds of repairs which are considered essential for typical properties in the state. Additionally, County Offices should be advised to obtain specific guidance in unusual cases.

(5) Yearly percentage decrease or increase in value. To provide a fair assessment of projected trends in farm land values, each State Director will establish a farm land market advisory committee (FLMAC). The committee will consist of the FmHA State Director, the State Executive Director of the Agricultural Stabilization and Conservation Service (ASCS), the State Conservationist for the Soil Conservation Service (SCS), and an Extension Specialist from a Land Grant University (if available) or other Agriculture Extension Service employee with knowledge of the farm real estate market.

The FLMAC will meet at least each July, and will consider at least the following information:

(a) The actual change in farm land values in the state during the previous year, as indicated in the most recent "Agricultural Land Values and Markets Situation and Outlook Report" issued by the USDA Economic Research Service.

(b) Current conditions in the state and national agricultural economics.

(c) Availability and cost of credit to purchase farm land.

(d) The amount of repossessed farm land held by FmHA, the Farm Credit System, and other private sector lenders.

(e) Any special conditions which would effect farm land values in the state.

(f) Any studies or research conducted by the State Agricultural University or similar scholarly source.

The FLMAC should, if possible, determine anticipated value changes on a regional basis within the state, if the state has agricultural regions with discernable differences.

The committee's meetings and decisions, including the basis for those decisions will be documented, retained in the State Office as part of the State supplement and provided to interested parties upon request.

Prior to providing the FLMAC determinations to FmHA field offices, the State Director will contact the FmHA State Directors in surrounding states to determine if the committee's findings are fairly consistent with those of surrounding states. If there are significant differences, the State Director may reconvene the committee to reconsider its findings.

B. *Chattel Costs*

FmHA rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless significant acquisitions occur and the Administration determines that chattels do have a holding period.

(1) Legal and Administrative Costs. The procedures outlined for determining these expenses for real estate loans will be followed, except that RMS work standards and other factors for chattel loans should be used.

(2) Resale Expense.

(a) Commissions—A study will be conducted, at least annually, to determine typical and reasonable commission rates for sales of chattel property in the state. The results of the study will be provided as guidance to field personnel.

(b) Repairs—Guidance should be issued as to the kinds of repairs required for resale.

County Supervisor Responsibilities

The County Supervisor will use the statewide costs and give careful consideration to the cost and other guidance provided by the State Director. The County Supervisor will determine certain localized liquidation costs based upon guidance in the supplement at least annually after receipt of the State supplement. These figures will be documented and provided to borrowers upon request.

A. Management Expense. If the County Office is not covered by State or District wide property management contracts, the management expense rates will be based upon local level contract rates, based upon the guidance provided in the state supplement.

B. Advertisements. The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with FmHA Instruction 1955–C.

C. Repairs. Approximate costs for typical essential repairs may be developed, considering the guidance in the state supplement. Repair items must be related to physical condition (i.e., roof, windows, doors, etc.) and not to functional or economic obsolescence.

D. Commissions. A survey of auctioneers will be made to determine the average commission rate for chattel sales in the area. Real Estate commissions, if any, will follow the state supplement.

E. Legal Expense. A survey of local closing agents will be performed to determine the cost FmHA will incur for closing transactions (title opinions, recorder's fees and the like).

F. Miscellaneous. Miscellaneous expenses such as land surveys which are routinely incurred should be determined by local survey and documented.

Income

Income will be added to net recovery value only when it is relatively certain that the income will be realized. Lease income will not be planned unless a lease is already in effect at the time the calculations are being made, and it appears that the lease will continue after FmHA acquires title. The amount of mineral or other lease or royalty income will be based upon the historical record of such income generated by the property. Chattels will not generate income unless they have a holding period.

Depreciation

The amount of depreciation anticipated for buildings and other improvements will be based upon the summation value and estimated remaining life of the improvement as reflected in the real estate appraisal. For example, a dwelling with a summation value of $40,000 and a remaining life of 20 years will depreciate at a rate of $2,000 per year. The depreciation calculations will be documented in the borrower's case file and provided to the borrower upon request. Chattels will not be depreciated unless they have a holding period.

Exhibit J—The Debt and Loan Restructuring System (DALR$)

Farmers Home Administration (FmHA) primary loan service programs provide a large number of alternatives for restructuring an FmHA loan. The number of loans a borrower has increases the number of combinations of possible alternatives. It is difficult and extremely time consuming to manually calculate all the potential combinations of servicing actions. To assure that the various combinations of programs are considered, FmHA has developed the Debt and Loan Restructuring System (DALR$) for operation of the County Office computer system. FmHA personnel will not manually perform the calculations in this Exhibit. This Exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ goes through.

What is DALR$?

DALR$ is a computerized decision support tool. This means that the computer assists the FmHA loan officer in making a decision. For example, FmHA regulations specify criteria for determining the interest rate when loans are restructured. DALR$ will select an interest rate using the criteria in the regulations. Judgement decisions are made by the FmHA loan officer in evaluating the Farm and Home Plan and other information entered into the DALR$ system.

DALR$ Operating System

DALR$ operates on the AT&T 3B2 computer system in FmHA field offices. It runs under the UNIX (registered tm, AT&T) computer operating system. DALR$ also utilizes Prelude (registered tm, Venturcom) for data entry and storage functions. To operate DALR$, UNIX System V, version 2.0.5 and Prelude version 2.1 are required.

FmHA developed DALR$ to run under UNIX and Prelude because those systems have the capabilities necessary to allow for relatively rapid development, and are available in all FmHA offices. DALR$ will not run under DOS on personal computers. Due to lack of resources, FmHA does not plan to develop duplicate computing capabilities on personal computers. FmHA will provide copies of program diskettes and/or source code to interested parties upon request.

Advantages of DALR$

The DALR$ system provides several benefits to FmHA borrowers:

1. Speed of calculation. Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

2. Consistency. The use of DALR$ assures that all calculations will be performed in the same way, and that the feasibility of all requests will be evaluated on the same calculation methods.

3. Full consideration. DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

4. Reduction of errors. Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. It is important to note, however, that DALR$ results are only as reliable as the input data.

What DALR$ Does

DALR$ performs a series of mathematical calculations based upon predetermined critera. These same calculations and procedures would be followed when calculations are performed manually. DALR$ also generates a printed summary of its computations for FmHA and the borrower.

Overview

In arriving at a debt restructuring plan, DALR$ will take advantage of all primary loan service programs to maximize the borrower's ability to repay debt and remain on the farm and avoid loss to the government.

Several combinations of primary loan service programs may be necessary to keep the borrower on the farm and avoid losses to FmHA. DALR$ will examine each combination until a feasible plan is reached or it is determined a feasible plan is not possible with full utilization of primary service programs.

DALR$ considers each primary serving option in the order described below until an appropriate solution is found. Each step increases FmHA's level of assistance to the Borrower and, when applicable, includes the primary loan service programs provided by previous steps.

1. Apply payments, including proceeds from the sale of non-essential assets, which the borrower plans to apply to outstanding FmHA debt.

2. Reschedule/reamortize loans at maximum terms with interest rates at the minimum or original note interest rate or regular loan program rate. Loans may be considered for consolidation in accordance with § 1951.909 of this subpart prior to being entered into the DALR$ system.

3. Reschedule/reamortize loans at maximum terms with interest rates at the minimum of original note interest rate or applicable limited resource loan program rate.

4. Defer loans at the maximum term and minimum interest rate permitted by program regulation until a feasible plan is obtained in the first year. Loans are selected for deferral so as to minimize debt repayments in the years after the deferral period. If deferral of a loan will result in an excess cash flow margin in the first year then a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

5. Provide Softwood Timber loan deferral, when requested by borrower, to the maximum limits permitted by program regulations. Loan deferrals will be recalculated selecting Softwood Timber loans first so as to:

a. Minimize any decrease in present value caused by conversion to Softwood Timber loans, and

b. If regular deferrals are still needed to facilitate a feasible plan in the first year, minimize the increase in payments in the year after the expiration of deferral period.

A Softwood Timber loan deferral has the same effect on existing FmHA debt repayment as a full write down of the same amount of debt. A Softwood Timber loan deferral, however, will always have a greater present value. Therefore, after a loan is selected for Softwood Timber deferral it will not be considered for write down since this will always reduce present value.

6. Write Down—

Write down loans in the order, at the interest rates, and in combination with other primary loan service programs to maximize the ability of the borrower to remain on the farm and avoid FmHA loan losses.

a. Conservation Easements

Conservation Easement write-down (when requested by the borrower) will be considered over debt write-down whenever such FmHA Instruction 1951–S consideration will not prevent development of a debt restructuring plan which will keep the borrower on the farm.

b. Security Considerations

The FmHA County Supervisor will evaluate each loan and determine its write-

down priority considering the degree of collateralization. Loans which are secured but have no collateral value will generally be selected for write down before loans which are at least somewhat collateralized. There are three write-down security/collateral categories.

(1) Low: These loans may be secured or unsecured and have no collateral value.

(2) Medium: These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.

(3) High: These loans are secured and fully collateralized; the Government's interest is fully protected.

c. Methodology

(1) Method 1 (See Section VI B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See Section VI C of this exhibit for a full description) will be used to develop a restructuring plan.

(2) For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, write down amounts will be calculated so that the "Balance Available" to repay debt is equal to or as close as possible to the "Debt Repayment".

(3) Loans selected for regular deferral will remain deferred, but will be fully or partial written down if needed to obtain positive cash flow margins. Loans converted to Softwood Timber loans (if requested) will remain Softwood Timber loans and will not be written down because writing down Softwood Timber loans decreases present value.

7. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell non-essential assets, improve security on FmHA debt, and consider Softwood Timber loans and Conservation Easements (if not originally requested by the Borrower and is permitted by program regulation).

Each of these measures will increase the computed present value. DALR$ will use the new/revised information provided by the borrower and the FmHA County Supervisor to assure that the restructuring of existing FmHA debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA loan losses.

Iterative Calculation Process

I. Existing Loan Interest Rates

A. Obtain status information on each loan.

The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

1. Principal balance.

2. Accrued interest balance.

3. Non-capitalizable interest balance.

B. For each loan compute the interest accrual to the proposed effective date for servicing actions.

Interest Accrual = P × Iex × N-DAYS.

Where:

1. "P" is the outstanding principal balance on the date on which loan status information was obtained.

2. "Iex" is the daily interest accrual (decimal equivalent) based on the existing interest rate for the loan. Daily interest accrual is equal to the existing annual interest rate divided by 365.

3. "NDAYS" is the number of days between the effective date and the status information date. If February 29 occurs between these two days it is not added to the number of days.

C. Determine the amount of Non-capitalizable accrued interest.

1. Deferred loans.

All accrued interest is non-capitalizable interest.

2. Other loans:

Interest less than 90 days past due is non-capitalizable interest.

II. Regular Program Interest Rates

A. Determine balance of funds available for debt repayment in the next planning year. This is the "Balance Available in Year 1". If loan deferrals are anticipated or are needed, also determine the Balance Available for debt repayment in the year after the end of the specified deferral period.

B. Determine total debt repayment in the next planning year. This is the "Debt Repayment in year 1." If loan deferrals are anticipated or are needed, also determine the debt repayment in the year after the end of the specified deferral period. Included in this amount are:

1. New loans:

New loans planned may affect repayment in the first planning year and/or the year after the end of the specified deferral period, depending on when the loan will be made and the repayment term. The equal annual payments on these new loans are included in the debt repayment calculations. Regular program interest rates (not limited resource rates) are used for all new loans.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that it is not possible to develop a feasible plan at regular program rates.

2. FmHA Loan for annual operating expenses.

Repayment of FmHA loans for annual operating expenses are based on regular loan program interest rates.

Included in this amount is the annual operating expense loan principal which is due in the applicable planning year.

Interest accrual on this loan may be estimated by multiplying the principal to be paid in the applicable planning year by the regular loan program interest rate (monthly decimal equivalent) and then by the average number of months the principal will be outstanding. See Attachment 1, Formulas, for details.

If some of the principal will be carried over to future years then that portion is either:

a. Included with the new loan payments computed using the amortization factor over the applicable loan term at regular loan program interest rates, or

b. If the amount to be carried over is already included in an existing loan, it is rescheduled with the existing loan over the maximum term permitted by program regulation.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that a feasible plan is not possible with regular program rates.

3. Existing FmHA loans:

Also included are all repayments on existing FmHA debt as it stands now without servicing actions. As DALR$ steps through the debt restructuring process this repayment amount will change.

Some existing loans may include in whole or in part an FmHA loan for annual operating expenses which is expected to be repaid in the current year. Since the debt repayment on FmHA annual operating expense loans is estimated in the previous step, the repayment of this debt should not be included with the repayment of existing loans. Only the repayment of long term debt should be included.

C. Apply loan payments which are planned to be made on the effective date of the servicing actions.

1. Payments are first applied to reduce/eliminate delinquent interest, then non-delinquent interest and then remaining principal balance.

2. If any loan is paid off in full because of these payments, recompute the debt repayment in year 1.

3. If the balance available is greater than or equal to the debt repayment in year 1 and there are no delinquent loans then no further servicing actions in DALR$ are required.

D. Reschedule/reamortize loans as needed to eliminate any delinquency.

1. Criteria:

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) the original note the interest rate.

(2) the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

e. The transaction records from the last payment date and last due date may be used to assist in determining the dollar amount of interest less than 90 days past due.

2. The Process.

a. Identify delinquent loans. All of these loans will be rescheduled/reamortized.

b. Recompute debt repayment in year 1.

c. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

E. Reschedule/reamortize the remaining non-delinquent loans.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) the original note interest rate.

(2) the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

NOTE: Interest is not due until the loan installment is due. The date the servicing action takes place relative to the due date will effect how much interest can be capitalized. For example:

(i). A borrower is current January 1, 1988. An analysis in December 1988 indicates the borrower cannot pay installments due January 1, 1989. Based on the 1989 farm plan, the debts can be restructured. The loans will be restructured on January 10, 1989. None of the accrued interest is 90 days past due and no interest will be capitalized.

(ii). Same situations (i) , except the restructuring occurs on April 2, 1989. The interest which accrued prior to January 1, 1989, will be capitalized. Interest which accrued after January 1, 1989, will not be capitalized.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized unless the County Supervisor indicates that rescheduling should be carried out to eliminate unequal payment schedules or balloon payments.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

III. Limited Resource Interest Rates

A. Recompute debt repayment in year 1.

1. Criteria.

a. New loans will have the maximum term permitted by program regulation, using the limited resource interest rates (when applicable) which will be effective on the date of the servicing actions.

b. Interest accrual on the FmHA loan(s) for annual operating expenses will be at the limited resource rate (when applicable).

2. The Process.

a. Recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1, no further servicing actions are required.

B. Reschedule/Reamortize existing loans eligible for limited resource rates to obtain a positive cash flow margin in the 1st planning year.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) the original note interest rate.

(2) the loan program limited resource interest rate in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first unless it is deliquent.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to Debt Repayment then no further servicing actions are required.

IV. Deferrals

A. Deferrals Period.

1. Deferral will only be beneficial if the cash flow margin will improve after the deferral period. This improvement must begin no later than six years after the current planning year, since the maximum deferral period is 5 years.

2. To determine the appropriate deferral period the County Supervisor and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

3. It is not necessary that deferrals provide a positive cash flow margin after the deferral period because it is still possible to obtain a positive cash flow margin with a combination of deferrals, debt write down and the other primary loan service programs. However, to maximize the potential for the borrower to remain on the farm and avoid losses on FmHA loans, a new farm plan must be prepared by the FmHA County Supervisor and borrower for the year after the end of the selected deferral period.

4. If there is no anticipated improvement in cash flow margin, then a deferral year plan need not be prepared since other combinations of primary service programs will maximize the potential for the borrower to remain on the farm and avoid losses on FmHA loans.

B. Deferrals.

1. Criteria.

a. Loans which have been rescheduled/reamortized previously in DALR$ will be rescheduled/reamortized at the same interest and term.

b. Other loans which have not been previously rescheduled/reamortized in DALR$ will be rescheduled/reamortized as follows:

(1) Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

(2) The interest rate will be the minimum of:

(a) the original note interest rate.

(b) the loan program interest rate (limited resource, if applicable) in effect on the date of the servicing action calculations.

(3) Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

(4) Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

This selection process will assure that after a positive cash flow margin is achieved in the 1st year, the cash flow margin in the year after the deferral period will be the greatest.

a. Calculate the payment after the deferral period for each loan eligible for deferral. This is only a side calculation to determine the best order of selection. A deferral will decrease the payments in the 1st planning year and increase the payments in the year after the deferral expires.

b. For each loan compute the ratio of the increase in "after deferral period" payment to the decrease in 1st year payment.

c. The loan with the smallest ratio is deferred first and so on until the balance available is greater than or equal to debt repayment in year 1.

3. The Process.

a. Taking one loan at a time, defer the selected loan, recompute the debt repayment in year 1. Also compute the debt repayment in the year after the end of the deferral period.

b. If the balance available is equal to debt repayment in year 1 and the balance available is greater than or equal to debt repayment in the year after the end of the deferral period then no further servicing actions are required.

c. If the balance available is greater than the debt repayment in year 1, then this implies that the last loan deferred did not require a full deferral.

(1) Compute amount of deferral of the last loan necessary to achieve equality between balance available and debt repayment in year 1.

(2) Recompute payments for this loan during the deferral period and the years after the expiration of the deferral period.

(3) If the balance available in the year after the deferral period is greater than or equal to the debt repayment then no further servicing actions are required.

4. Partial Deferrals.

a. Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payments on that loan. See

Attachment 1 to this Exhibit for applicable formulas for partial deferrals.

b. Examples:

Case 1: Partial Deferral without Write Down.

Situation: A full deferral is more than is needed to achieve a positive cash flow margin in year 1. A full payment on the loan will produce a negative cash flow margin in year 1.

The Process.

1. Determine amount of deferral of necessary to achieve a feasible plan in the first year.

"d" is the fraction of the loan which must be deferred. This fraction is applied to both the principal (P) and the non-capitalizable interest (N).

"r" is the amount of cash flow margin in the first year with a full deferral. "R" is the debt repayment on the loan in the first year without deferral.

d—1—(r/R).

2. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion.

$P_1=(1-d) \times P=(r/R) \times P$.

$N_1=(1-d) \times N=(r/R) \times N$.

Deferred Portion

$P_2=P-P_1$.

$N_2=N-N_1$.

Case 2: Partial Deferral with Write Down.

Write down is required for a feasible plan. In this situation the write down and partial deferral must yield a payment which exactly meets the borrower's ability to repay debt. This will maximize the "Present Value" and the borrower's ability to remain on the farm.

Situation: The loan is partially deferred to achieve a feasible plan in the 1st year. The payments in the year after the end of the deferral period exceed the borrower's ability to pay even with a partial deferral. Write down is necessary to achieve a feasible plan. The loan which is partially deferred has been selected as the next loan to write down based upon write down selection criteria.

Write down sequence:

1. The non-capitalizable interest (of the deferred portion of the loan) will be written down first until a feasible plan is achieved or the non-capitalized interest (of the deferred portion of the loan) is fully written down.

2. The remaining principal (on the deferred portion of the loan) is then written down until a feasible plan is achieved or the principal is fully written down.

3. At the point the deferred portion of the loan has been fully written down, but a feasible plan has not yet been found. The subject loan is now a non-deferred loan with reduced principal and reduced non-capitalizable interest. This new loan must now compete for selection for write down with all remaining loans based on the write down selection criteria.

V. Softwood Timber

A. Criteria.

1. Loan terms will be the maximum permitted by program regulation.

2. The interest rate will be the minimum of:

a. the original note interest rate, or

b. the Softwood Timber program interest rate which will be in effect on the date of the servicing action calculations.

3. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period.

4. Interest less than 90 days past due will not be capitalized and accrue interest, and will be payable at the end of the Softwood Timber deferral period.

5. The rescheduled/reamortized principal amount plus any non-capitalized interest of Softwood Timber loans will not exceed the maximum amount permitted by program regulation or the amount needed to develop a feasible plan, whichever is less.

B. Loan Selection.

Loans will be selected for the Softwood Timber loan program to maximize the present value after conversion to Softwood Timber, thus avoiding loan losses.

1. Cancel all previously calculated deferrals.

2. For each loan compute the present value before and after conversion to a Softwood Timber loan. Then compute the decrease in present value (note: for loans in which the present value increases this will be negative number).

3. For each loan compute the ratio of the decrease in present value to the decrease in first year repayment after conversion to a Softwood Timber loan.

4. Select the loan with the smallest (or most negative) ratio first.

5. If loans have equal ratios select the loan having the least security among these loans first. Softwood Timber loans will have new security instruments. This will improve the FmHA security and could increase present value if write down is required for other loans.

C. The Process.

1. Starting with the first loan in the list of loans ordered to minimize decrease in present value convert the loan to Softwood Timber.

2. Continue this process until the maximum limit for Softwood Timber conversion is reached or a feasible plan is possible in the first year.

3. If a loan is only partially converted then create a new loan identity for the partially converted loan. The portion not converted retains the same interest rate and term prior to the conversion to Softwood Timber.

4. If fully utilizing Softwood Timber loan conversion authorities do not result in a feasible plan in the first year rework the loan deferral calculation described in Section IV of this exhibit (if applicable). Do not include the loans selected for Softwood Timber loans in the reworking of the deferral calculations.

5. If conversion to a Softwood Timber loan will permit a feasible plan to be developed (with or without deferrals) no further servicing actions are required.

VI. Write-Down

Write-down of loans will proceed with Method 1 (contained in VI B) first. If a debt restructuring plan which will keep the borrower on the farm cannot be found using Method 1, then write-down will be recalculated using Method 2.

A. Status.

Debt repayments are at their absolute minimum, a feasible plan is still not possible in the first year and/or the year after the end of the deferral period (if applicable).

1. At this point consideration of primary loan service programs has had the following result:

a. All delinquent loans have been rescheduled/reamortized.

b. If the borrower plans to make payments prior to the servicing actions, these payments have been applied to loans to reduce indebtedness.

c. All existing FmHA loans have been considered for rescheduling/reamortization.

d. Deferrals have been computed for borrowers when the cash flow margin in the year after the deferral period was higher than the cash flow margin in the first year.

e. Loans have been converted to Softwood Timber loans (when requested by the Borrower) to the maximum extent permitted by program regulations.

2. FmHA loans for annual operating expenses and all proposed new loans have been computed at limited resource rates (when applicable).

3. All loans are at the lowest interest rate and maximum term permitted by program regulations.

B. Method 1.

Provide Conservation Easement write down on eligible loans, when requested by the borrower, to the maximum limits permitted by program regulations. Conservation Easements will be the first write down considered in this method. If a feasible plan is not obtained using conservation easements then the remaining loans will be written down using debt write-down authority.

1. Criteria.

a. Only loans secured by real estate are eligible for conservation easement write-down.

b. Interest rates, loan terms, loans selected for deferral (if applicable) do not change from the status described in Section VI A of this exhibit. That is, debt repayment is at the absolute minimum.

c. Loans converted to Softwood Timber loans will not be written down.

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as necessary:

a. Place all loans eligible for conservation easements in a single group. Of these loans order them for selection as follows:

(1) Least collateralized loans first.

(2) For loans with equivalent collateralization, loans with the largest "Amortization Factor" first. (See Amortization Factors in Attachment 1 to this exhibit.)

b. If a feasible plan is not obtained using conservation easements or conservation easement write-down had not been requested order the remaining loans as follows:

(1) Unsecured and/or least collateralized loans first.

(2) For loans with equivalent security, loans with the largest "Amortization Factor" first. (See Amortization Factors in attachment to this exhibit.)

3. The Process.

Each time a new loan is selected for write-down, deferrals (if applicable) must be recalculated as described in Section IV of this exhibit.

a. Conservation Easement write-down.

(1) Starting with the first loan selected for conservation easement write-down, determine whether a full write-down will permit a feasible plan in the applicable year. The applicable year is the first planning year if deferrals have not been considered. If deferrals have been considered it is the year after the end of the deferral period.

(2) If a full conservation easement write-down will achieve positive cash flow compute the amount of conservation easement write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount. No further servicing actions are required.

(3) If a full conservation easement write-down does not achieve a positive cash flow margin in the applicable year, recompute the debt repayment in the first planning year and the debt repayment in the year after the end of the deferral period (if applicable). Deferrals will have to be recalculated using the methods described in Section IV of this part.

(4) Continue selecting loans for conservation easement write-down and repeat this process until an acceptable cash flow margin is obtained in the applicable year or the maximum conservation easement write-down permitted by program regulation is obtained.

b. Debt Write-Down.

(1) Conservation easement write-down (if applicable) did not attain a positive cash flow margin in the applicable planning year. With the remaining loans, reprioritize their selection without regard to eligibility for conservation easements using the criteria described in section VI B 3 of this exhibit.

(2) Using debt write-down authority write down each of these loans until a positive cash flow margin is obtained in the applicable year. Compute the amount of write-down for that loan so that the balance available is equal to the debt repayment.

(3) If the present value of the future payment stream on remaining debt equals or exceeds the net recovery value of the collateral for FmHA loans then no further servicing actions are required.

C. Method 2.

Use this method only if Method 1 does not find a debt restructuring plan which will allow FmHA to continue with the borrower.

1. Criteria.

a. Loan terms are the maximum permitted by program regulation.

b. All other loans (except Softwood Timber loans), including the loan selected for write down will be at the minimum of the original note interest rate or the limited resource interest rate (if applicable).

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as required.

a. Unsecured and/or least collateralized loans first.

b. For loans with equivalent security, loans with the smallest present value factor first. (See Present Value Factor in Attachment 1 of this exhibit.) Note the Present Value Factor is independent of loan interest rate.

c. For loans with equal present value factor, loans with highest interest rate first.

3. The Process

Each time a new loan is selected for write-down all loans whose interest rates change according to the criteria in Section VI C1b of this exhibit will be rescheduled/reamortized using the new interest rate. Deferrals (if applicable) must also be recalculated as described in Section IV of this part.

a. Starting with the first loan selected for debt write-down, determine whether a full write-down will result in a positive cash flow margin in the applicable year. The applicable year is the first planning year if deferrals have not been used. If deferrals have been used, it is the year after the deferral period.

b. If a full debt write-down results in a positive cash flow compute the amount of write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount and test present value with net recovery value.

D. Net Recovery Value Test

1. Conservation Easements have been requested. The Net Recovery Value test is not applicable and no further servicing actions are required if all of the following are applicable:

a. The loan is eligible for conservation easement.

b. The write-down amount does not exceed the conservation easement write-down limit specified by program regulations.

c. All other loans written down were based on conservation easement authority.

2. If the present value of the repayment on remaining FmHA debt equals or exceeds the net recovery value of collateral a debt restructuring plan has been found which will keep the borrower on the farm and no further serving actions are required.

3. If a full write-down of a loan does not achieve a positive cash flow margin in the applicable year continue selecting loans for write-down and repeat this process until a positive cash flow margin is obtained in the applicable year or there are no other loans left to write-down.

VII Net Recovery Value

DALR$ computes the net recovery value of collateral to obtain a value to use for the net recovery value test outlined in section VI C3b of this exhibit, as required in § 1951.909(f) of this subpart. See Exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral," for guidance in determining the value of specific items in the net recovery alue calculations outlined have.

Net recovery value is computed for all FmHA Farmer Program loan security. If FmHA's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA credit, and FmHA has a junior lien subject to the purchase money financing. In the case of the second tractor, FmHA subordinated its lien to another lender to finance repairs, thus, FmHA has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

The general formula for net recovery value is as follows:

market value of security
minus prior liens
minus property taxes while in inventory
minus depreciation on property
minus management charges
minus repairs necessary for resale
minus legal and administrative fees
minus sales costs
minus advertising cost
Plus/minus increase/decrease in value while in inventory
minus interest cost while in inventory
minus miscellaneous expenses, if any
plus anticipated income while in inventory
equals net recovery value for security property
total of net recovery value for individual property items-net recovery value of collateral.

The individual items in the net recovery value formula are computed as follows:

1. Market value of security—the market value of the security based upon a current appraisal.

2. Prior liens—the total of all liens proceeding FmHA's security interest, including past due taxes and assessments and subordinates.

3. Property taxes and assessments while in inventory—(annual tax and assessments due divided by 12) × average holding period in months.

4. Depreciation on property—Annual amount of depreciation determined by the County Supervisor, divided by 12) × average holding period in months.

5. Management charges—based upon methods of management used (acres under management × annual rate per acre) divided by 12 × average holding period in months, or (net income on a monthly basis × percentage fee charged) × average holding period in months, or the anticipated monthly management and maintenance expense × average holding period in months, or the total of the appropriate combination of these.

6. Repairs—as determined necessary by County Supervisor.

7. Legal fees—determined with guidance from the State Director.

8. Sales costs—commission rate × market value of security.

9. Advertising—cost of three-week advertisement 1 time × (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease—annual percentage divided by 12 × average holding period in months × market value.

11. Interest cost during inventory period—(interest rate on 90-day T-Bills × current market value) divided by 12 × average holding period, in months.

12. Average holding period for inventory, in months—determined by the State Director in accordance with FmHA Instructions.

13. Miscellaneous—any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income—income received every month × average holding period in months + (total of non-monthly income received for the year divided by 12) × average holding period in months.

VIII. Summary

At this point, DALR$ has finished its calculations. DALR$ will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALR$ will provide a report of the results of the calculations performed, including the present value test.

If DALR$ does not find a solution that will provide a feasible plan, FmHA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

Attachment 1.—Formulas Used in DALR$ Calculations

I. Amortization Factors (AF)

There are two amortization factors used to compute equal annual installment debt repayments: (1) The amortization factor for interest bearing debt and, (2) The AF for non-interest bearing debt. The first AF is a function of both loan term and interest. The second AF is a function of loan term only.

A. Amortization factor for interest bearing debt

1. Notation: [AF](i,t) (AF=amortization factor)

2. $[AF](i,t)=[i\times(1+i)^t]/[(1+i)^t-1]$

where

a. "t" is the loan term (years)

b. "i" is the annual interest rate (decimal equivalent)

3. Calculation of the amortization factor for interest bearing debt

example: loan terms are 5% interest, 15 years (i=.05, t=15)

$AF=(.05\times(1+.05)^{15})/((1+.05)^{15}-1)$

AF=.09635

B. AF for non-interest bearing debt

1. Notation: [AF](0,t)

The notation is similar to the notation used for the AF of interest bearing debt except the interest rate is set equal to zero (0).

2. Formula

$[AF](0,t)=1/t$

Where

"t" is the term of the loan (Years)

This factor is used to determine annual repayment of Non-capitalized debt. Accrued interest less than 90 days past due is one type of non-capitalized debt. Note: The AF formula for interest bearing debt reduces to this formula when interest is zero.

3. Calculation of the amortization factor non-interest bearing

example: loan term is 15 years

AF =1/15

AF = .06667

II. Present Value Factor (PVF)

Present value is calculated when debt writedown is used. The present value of restructured loans is the sum of the present values of individual loans computed using these formulas.

There are two present value factors used to compute the present value of future payments. (1) The present value factor for single payments and (2) the present value factor for uniform series payments.

A. PVF for single repayments

1. Notation: [PV1] (id,t) (PV1=Present value 1 payment)

2. Formula

$[PV1](id,t)=1/(1+id)^t$

where

a. "t" is the number of payments (years) from the "present" date. In all calculations, the "present" date is the effective date of proposed servicing actions.

b. "id" is the "discount rate" (annual decimal equivalent)

example: a payment will be received 45 years from the present date.

The discount rate is 7%

id = .07 t=45

$PV1=1/(1+.07)^{45}=.047613$

if the payment to be received is $50,000

PV= PV1 × 50,000 = 2381

B. PVF for uniform series of payments (equally amortized installments)

1. Notation: [PVS] (id,t) (PVS=Present value of series of equal payments)

2. Formula

$[PVS](id,t)=[(1+id)^t-1]/[id\times(1+id)^t]$

Where

a. "t" is the number of payments (years) from the "present" date. In all calculations, the "present" date is the effective date of proposed servicing actions.

b. "id" is the "discount rate" (annual decimal equivalent)

example: a series of equal annual installments will be received annually for 30 years.

The discount rate is 7%

id =.07 t = 30

$PVS=[(1+.07)^{30}-1]/[.07\times(1+.07)^{30}]=7.6031$

if the annual installment is $10,000

PV= PVS × 10,000 = 76,031

III. Joint Amortization Factor

This factor is used in the selection of loans for deferral and for write down. It is the weighted average of the amortization factors for interest bearing debt and non-interest bearing debt. When this factor is multiplied by the remaining balance on the loan it yields the equal annual installments for the loan.

A. Calculations

1. Notation: [JAF] (i,t)

2. Formula

$[JAF](i,t)=[(P\times[AF](i,t))+(P_{nc}\times[AF](O,t))]/P_T$

where:

"P" is the sum of the principal balance plus the past due accrued interest.

"P_{nc}" is the non-capitalizable portion of the accrued interest.

"P_T" is the total debt and equal to $P + P_{nc}$

"[AF] (i,t)", "[AF] (O,t)", "t" and "i" are as defined in paragraphs I.A. and I.B. in this attachment.

example: $P=5,886$ $P_{nc}=581$ $P_T=6,467$

i=.05(5%) t=15 (years)

[AF] (i,t)=.09635 [AF](0,t)=.06667

JAF=[(5886×.09635)+(581×.06667)/6467

JAF=.09369

Annual installment=P_T JAF

Annual installment=$606 (always round to next dollar)

IV. Average Month Outstanding (FmHA Annual Operating Expense Loan):

This is the average number of months an FmHA loan of annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, loan(s) for annual operating expenses are estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months
15,000	3
8,000	2
6,000	4

Average Months=(3×15,000)+(2×8,000)+(4×6,000)

15,000 (total loans for annual oper. exp.)

Average Months=(45,000+16,00+24,000)/15,000

Average Months Outstanding=85,000/15,000

Average Months Outstanding=5.7 months (Round to nearest tenth of month)

V. Partial Deferral

Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payment on that loan. Calculation of the partial deferral proceeds as follows:

Input Data

P: Loan Principal plus capitalizable accrued interest without write down.

N: Non-capitalizable interest without write down.

i: Interest Rate (decimal, annual basis)

t: Loan Term (Years)

n: Deferral period

r: Excess cash flow margin created in the first year with a full deferral of a loan.

Calculated/Formula Variables

R: Full payment on loan without deferral or write down

$R=[(p\times[AF](i,t))+(N/t)]$

R: Full payment on loan with deferral but no write down.

d: fraction of loan deferred, d=1-(r/R).

Output Information

Non-deferred Portion of Loan

P_1: Loan Principal plus capitalizable interest on nondeferred portion of loan.

N_1: Non-capitalizable interest on non-deferred portion of loan.

Deferred Portion of Loan

P_2: Loan Principal plus capitalizable interest on deferred portion of loan.

N_2: Non-capitalizable interest on deferred portion of loan.

The Process

1. Determine the order in which loans will be deferred based upon the JAF (section III of this attachment.

2. Determine amount of deferral necessary to achieve a feasible plan in the first year (compute variable d).

3. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion

$P_1 = (1-d) \times P = (r/R) \times P$

$N_1 = (1-d) \times N = (r/R) \times N$

Deferred Portion

$P_2 = P - P_1$

$N2 = N - N_1$

Exhibit K—Notification of Consideration for Preservation Loan Service Programs

Dear (Borrower's Name):

This notice is to inform you that you are being considered for Preservation Loan Service Programs (Homestead Protection and leaseback/Buyback). You applied for these programs when you applied for Primary Loan Service Programs (debt restructuring).

FmHA was unable to assist you to restructure your FmHA loans with Primary Loan Service Programs. We will continue to consider you for Homestead Protection and Leaseback/Buyback. We will, however, need the following additional information to complete our processing of your request:

1.

2.

3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Preservation Loan Servicing and you will be notified of your right to appeal FmHA's adverse decision.

If you wish to withdraw your request for Preservation Loan Servicing Program, please complete and return the enclosed Attachment 1, "Response to Notification of Consideration for Preservation Loan Service Programs," within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

Attachment 1—Response to Notification of Consideration for Preservation Loan Service Programs

TO: County Supervisor, Farmers Home Administration.

FROM: (Please Print your Name and Address).

I have read the Notification of Consideration for Preservation Loan Service Programs which I received with this response form.

I want to withdraw my request for preservation loan servicing.

Borrower's Signature

(Date)

Exhibit L—Homestead Protection Program Agreement

This agreement is entered into this — day of ———, 19—, by and between the Farmers Home Administration (FmHA) of the United States Department of Agriculture and ——— ("Borrower").

A. Borrower has received a loan or loans from FmHA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FmHA loan(s) may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FmHA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FmHA acquires title to it.

D. FmHA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FmHA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA agrees to lease the Homestead Protection property, as more particularly described in Attachment 1 attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Attachment 2 (the "lease"). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FmHA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FmHA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be — years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This amount will be determined prior to execution of this agreement. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955–20. If the Borrower disagrees with the rent determined by the County Supervisor, the borrower can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. Borrower agrees to cooperate with FmHA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FmHA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect. The borrower may appeal this decision pursuant to Subpart B of Part 1900 of this chapter.

Farmers Home Administration

By:— ———

Borrower:

———

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955–20.

Exhibit M—Homestead Protection Program Letter

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Insert Address)

NOTICE OF THE AVAILABILITY OF HOMESTEAD PROTECTION

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FmHA acquired the property which was security for your FmHA loan. FmHA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm outbuildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 90 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you may contact the County Supervisor at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Homestead Protection Program.

Sincerely,

County Supervisor.

Exhibit N—Leaseback/Buyback Agreement

This Agreement is entered into this — day of ———, 19—, by and between the Farmers Home Administration ("FmHA") of the United States Department of Agriculture and ——— ("Lessee").

A. Lessee is eligible for the FmHA leaseback program under 7 CFR Part 1951, Subpart S, for the real property described on the enclosed Attachment 2 (the "leaseback property").

B. FmHA has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA 1955–20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions:

a. FmHA acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Homestead Protection rights under 7 CFR Part 1951, Subpart S, the leaseback property will be reduced by the Homestead Protection property. FmHA's obligation to lease the remaining leaseback property is contingent on FmHA's determination that all State and local laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be — years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA 1955–20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. The property, upon acquisition by FmHA, will be subject to any applicable USDA restrictions regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end.

Farmers Home Administration
Lessee
By:

_____

County Supervisor

_____

Date

Exhibit O—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor to advise a former owner who held title to the property of the availability of leaseback/buyback)

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Date: _____

Dear _____:

The farm that you once owned may be available for you to buy or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations, 7 CFR Part 1951, Subpart S. FmHA acquired this property on ———. The FmHA leaseback/buyback program may permit you to lease or purchase the property. You may select the terms of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the County Supervisor at ———. In order to be considered for leaseback/buyback, you must make application at the County Office not later than (enter the date 180 days from acquisition or period longer than 180 days if applicable State laws perscribe a longer period). We recommend that if you are interested in leasing or purchasing the property, you should immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an individual] If you are not interested in purchasing or leasing the property and if you have a spouse or childr(ren) who are actively engaged in farming, they have a preference to buy or lease, the property. It will be your responsibility to notify your spouse and child(ren) of their possible rights to lease or buy the property. You should have them contact the County Supervisior if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribe a longer period). If you have a spouse or child(ren) that are interested in leasing or purchasing the property, we recommend they immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an entity] If you are not actively engaged in purchasing or leasing the property the shareholders (if the borrower was a corporation owned exclusively by members of the same family), partners (if the borrower was a partnership whose partners are exclusively members of the same family), or members (if the borrower was a joint operation or cooperative whose members are exclusively members of the same family) may have a preference to lease or purchase the farm. In order to qualify for leaseback/buyback the individual must be actively engaged in farming. You must have these people contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribed a longer period). If any of these individuals are interested in leasing or purchasing the property, we recommend they immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

Under some circumstances, an operator (lesee) of the property at the time FmHA acquired it may have a preference in leasing and purchasing the property. Please advise us immediately of the name and address of any lessee of the farm who was operating the farm when FmHA acquired it.

[If the property has a dwelling]. This property has a dwelling which is subject to the FmHA Dwelling Retention regulations 7 CFR Part 1951, Subpart S. If you are eligible for Dwelling Retention, you will be notified in a separate letter. If someone else has Dwelling Retention rights, then Dwelling Retention rights will take priority over leaseback/buyback rights.

Failure to apply leaseback/buyback by (insert date 180 days from date of acquisition or longer period than 180 days if applicable State laws prescribe a longer period) will terminate any rights that you have to purchase or lease the property under the leaseback/buyback regulations.

Sincerely,

County Supervisor.

Exhibit P—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor to advice operators of the availability of leaseback/buyback)

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Date: _____

Dear: _____

The farm that was previously owned by _____ (former owner) and operated (leased) by you may be available for you to purchase or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations 7 C.F.R. Part 1951, Subpart S. The FmHA leaseback/buyback program may permit you to lease or purchase the property. You may select the term of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the FmHA County Supervisor at ———. In order to be considered for leaseback/buyback, you must make application for leaseback or buyback at the County Office by (enter the date 30 days from date of this letter).

Failure to respond by this date will terminate any rights that you have to purchase or lease the property.

Sincerely.

County Supervisor.

Exhibit Q—Waiver of Leaseback/ Buyback Rights

(For use by the previous owner, any individual or entity to waive any rights to leaseback/buyback)

I (we) acknowledge that in accordance with the provisions of the Agricultural Credit Act of 1987 and Farmers Home Administration (FmHA) leaseback/buyback program, I (we) have certain rights to lease or purchase the property that [I (we) formerly owned— or [was formerly owned by (name of previous owner)] which was acquired by FmHA on [date of foreclosure or voluntary conveyance]. I (we) elect not to be considered for leaseback/buyback and hereby waive all rights to lease or purchase the subject property.

Date: _____

Date: _____

PART 1955—PROPERTY MANAGEMENT

47. The authority citation for Part 1955 13 revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

48. Section 1955.3 is amended by adding in alphabetical order a new paragraph for the definition of "Homestead protection" to read as follows:

§ 1955.3 Definitions.

* * * * *

Homestead protection. The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and up to 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

* * * * *

49. Section 1955.10 is amended by revising and introductory text, paragraph (c)(1)(ii) and paragraph (d)(8) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower in writing that there is equity in the property before accepting an offer to voluntarily convey. If FmHA receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. If the FmHA lien has neither present nor prospective value or if its enforcement would be unlikely or uneconomical, FmHA should refuse the voluntary conveyance. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of Subpart A of Part 1965 of this chapter or § 1965.118(c) of Subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart, "Worksheet for Determining the Recovery Value of Farmer Program Real Estate Security," will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its cost in return for the acceptance of the voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. For Farmer Program borrowers who have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the non-farm tract.

* * * * *

(c) * * *

(1) * * *

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) * * *

(8) Farmer program loan borrowers who voluntarily convey after receiving the appropriate loan servicing notice(s) contained in the attachments of Exhibit A of Subpart S of Part 1951 of this chapter, must properly complete and return the acknowledgement form sent with the notice.

* * * * *

50. Section 1955.13 is revised to read as follows:

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on Exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 U.S.C. § 2410) may be waived without consideration. If a State law right of redemption exists and may

be sold, it will not be disposed of for less than its value.

51. Section 1955.15 is amended by revising the introductory text, paragraphs (d)(2)(iv), (d)(3), (d)(5) and (f)(5) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area. Also, in Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this Chapter), the borrower must have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

* * * * *

(d) * * *

(2) * * *

(iv) If a borrower has both Farmer Program and SFH loans:

(A) When the borrower's dwelling financed with an SFH loan(s) is secured by the same farm real estate as the Farmer Program loan(s) (*dwelling located on the farm*), the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. One appeal hearing and one review will be held for both adverse actions.

(B) When the borrower's SFH loan financed *dwelling is located on a non-farm tract*, the SFH loan will not be accelerated simultaneously with sending out Attachments 7 and 8 of Exhibit A of Subpart S of Part 1951 of this chapter if the requirements of § 1965.25(d) or § 1965.26(c)(2) of Subpart A of Part 1965 of this chapter are met. If the aforementioned conditions of Subpart A of Part 1965 of this chapter cannot be met the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(3) *Offers by borrowers after acceleration of account.*

(i) *Farmers Programs (FP) accelerations.* This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the borrower will have 30 days from the date of the acceleration notice to make payment in full to stop the acceleration, unless State law requires that the foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify the requirement.

(A) Payment in full [see Exhibit D, "Notice of Acceleration—Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy," of this subpart (available in any FmHA office)] may consist of the following means of fully satisfying the debt.

(*1*) Cash.

(*2*) Transfer and assumption.

(*3*) Sale of property.

(*4*) Voluntary conveyance.

(B) Payments which do not pay the account in full can be accepted subject to the following requirements:

(*1*) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(*2*) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed. In States where payments cannot be accepted unless the acceleration is reversed, the payments will not be accepted. A State supplement will be issued to address State law on accepting payments after acceleration.

(*3*) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or convenant in the real estate instruments will result. Disposition of such payments will be made after consulting OGC.

(*4*) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations.* After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue

rental payments in accordance with their leases.

* * * * *

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed. In Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this chapter), the borrower must have received Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter, any additional notices required by Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

* * * * *

(f) * * *

(5) *Amount of Government's bid.* Except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For Farmer Program loans, except as modifed by paragraph (f)(6)(ii) of this section, the County Supervisor will document the Government's decision to either bid or not to bid on the property by the use of Exhibit G of this subpart. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

52. Section 1955.18 is amended by adding the introductory text, revising paragraph (h) and adding paragraphs (i), (j) and (k) to read as follows:

§ 1955.18 Actions required after acquisition of property.

The approval official may employ the services of local designated attorneys, of a case by case basis, to process all legal procedures necessary to clear the title of foreclosure properties. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

* * * * *

(h) *Homestead Protection.* The County Supervisor will notify the borrower-owner of homestead protection rights by sending Exhibit L of Subpart S of Part 1951 of this chapter to the borrower-owner, certified mail, return receipt requested.

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending Exhibit M of Subpart S of Part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights by sending Exhibit O of Subpart S of Part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, after FmHA acquires CONACT real property. The real property must have secured a CONACT loan. In the case of a conflict homestead protection and leaseback/buyback as the ownership or lease of the borrower's principal dwelling, the provisions of the homestead protection program will have priority over leaseback/buyback.

(j) *Priority disposal of inventory property.* Before any farm property which secured a Farmer Program loan is sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Subpart S of Part 1951 of this chapter) and the Homestead Protection program (see Subpart S of Part 1951 of this chapter). After the former owner/operator's rights have been concluded, the County Supervisor will dispose of the property in the priority order set forth in Subpart C of this part.

(k) *Debt Settlement.* For FP cases, the County Supervisor should debt settle any remaining FmHA indebtedness in accordance with Subpart B of Part 1956 and Part 1864 of the chapter (FmHA Instruction 456.1).

53. Section 1955.20 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1955.20 Acquisition of chattel property.

* * * * *

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens *and* the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept voluntary conveyance of chattels is not authorized. Before a voluntary conveyance from a Farmer Program loan borrower can be accepted, the borrower must be sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

* * * * *

54. Exhibit G to Subpart A is added to read as follows:

Exhibit G—Worksheet for Determining the Recovery Value of Farmer Program Real Estate Security

(Present owner/borrower)————————

Refer to Exhibit I in FmHA Instruction 1951–S for guidance in estimating the holding period, incomes and expenses in this exhibit.

1. Market Value of Property $————
   (Part 7, Form FmHA 422–1)
   Estimated Holding Period In Years ——
2. Income
   a. Annual Rent ——— × Holding Period ——— = ———
   b. Annual Royalties ——— × Holding Period ——— = ———
   c. Other Annual Income ——— × Holding Period ——— = ———
   d. Annual % Land Appreciation ——— × Holding Period ——— = ———
   e. Value gained due to restrictions that are placed on the farm such as Conservation Easement, Conservation Reserve Program (CRP), etc. = $————
   f. Other (describe) ——— × Holding Period ——— = ———
   Total Additions = $————
3. Expenses
   a. Total Prior Lienholder Indebtedness (P and I) = ———
   b. Other Acquisitions Costs (taxes presently owed, closing costs, junior liens, etc.) List: ———, ———, ———, ——— = ———
   c. Annual Taxes & Assessment ——— × Holding Period ——— = ———
   d. Annual Building Depreciation ——— × Holding Period ——— = ———
   e. Annual Management Costs ——— × Holding Period ——— = ———
   f. Total Essential Repairs to Secure & Resell = ———
   g. Annual % Decrease In Land Value (if applicable) ——— × Holding Period ——— = ———
   h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = ———
   i. Total Interest Cost: MKT Value, Regular*, Holding—
   $——— × OL Rate ——— × Period ——— = ———
   j. Value loss due to restrictions that are placed on the farm such as conservation, easements, etc., and Conservation Reserve Program (CRP), etc. = $————

*The regular operating loan rate more clearly reflects the Government's costs of money.

k. Hazardous Waste Clean-up Costs = _____

Total Deductions (Items A Through K) = _____

Recovery Value End of Holding Period:
1. Market Value _____ + 3. Total Additions _____ − 4. Total Deductions _____ = Recover Value _____

County Supervisor _____
Date _____

55. Sections 1955.51 through 1955.100 are revised and Exhibit B to Subpart B is added to read as follows:

Subpart B—Management of Property

Sec.
1955.51 Purpose.
1955.52 Policy.
1955.53 Definitions.
1955.54 Redelegation of authority.
1955.55 Taking abandoned real or chattel property into custody and related actions.
1955.56 Real property located in Coastal Barrier Resources System (CBRS).
1955.57 Real property containing underground storage tanks.
1955.58–1955.59 [Reserved]
1955.60 Inventory real property subject to redemption by the borrower.
1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.
1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
1955.63 Suitability determination.
1955.64 Securing, maintaining, and repairing inventory property.
1955.65 Management of inventory and/or custodial real property.
1955.66 Lease of real property.
1955.67 Payment of liens.
1955.68 Payment of taxes.
1955.69 Insurance.
1955.70 Inspection of property.
1955.71 Vandalism or theft.
1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).
1955.73–1955.79 [Reserved]
1955.80 Management of inventory chattel property.
1955.81 Exception authority.
1955.82 State supplements.
1955.83–1955.99 [Reserved]
1955.100 OMB control number.

Exhibits to Subpart B

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration.
Exhibit B—Notification of Tribe of Availablity of Farm Property for Lease or Purchase.

Subpart B—Management of Property

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower;

(b) Management of real and chattel property which is in FmHA's inventory;

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating); and

(d) Community Program loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

Contracting Officer (CO). CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

Custodial property. Borrower-owned real property and improvements which serve as security for an FmHA loan, have been abandoned by the borrower, and of which FmHA has taken possession.

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Government. The United States of America, acting through the FmHA, U.S. Department of Agriculture.

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Inventory property. Real and chattel property and related rights to which the Government has acquired title.

Loans to individuals. Farmer Program loans, as defined above, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

Loans to organizations. Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations) Business and Industrial (B&I) to both individuals and groups, Rural Development Loan Fund (RDLF), Intermediary Relending Program (IRP), Nonprofit National Corporation (NNC), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as

described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards; however, is so remotely located it would not serve as an adequate residential unit or an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonrecoverable costs. Costs incurred after Government acquisition of title to the property and charged to an inventory account.

Office of the General Counsel (OGC). The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Recoverable costs. Costs charged to a borrower's account, paid or incurred prior to Government acquisition of the property.

Servicing official. For loans to individuals as defined in this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For Rural Development Loan Fund and Intermediary Relending Program loans, the servicing official is the Director, Business and Industry Division. For Nonprofit National Corporations loans, the servicing official is Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

Socially disadvantaged individual. An individual that has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Suitable property. Property other than SFH or MFH, that could be used to carry out the objectives of a FmHA loan program with financing provided through that program. For farm inventory property, suitable property is farmland that can be used for general farming purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. Such farmland should produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm or part of a farm rather than a rural residence. Farmland will be classified as suitable regardless of its size, value, or quality unless the County Committee determines it cannot be used for farming purposes. The County Committee suitability determination is independent of any decision by FmHA to make or not to make a farm ownership loan on the property. Leaseback/buyback rights will be offered in accordance with Subpart S of Part 1951 of this chapter whether or not the property is considered surplus or suitable.

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agriculture lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 3 years after acquisition. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 3-year period will be extended to compensate for the period of time that property was not available for sale.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s), if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmers Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of this part. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of this part, unless the borrower can be located and voluntary

liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 of Subpart A of Part 1965 of this chapter will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this chapter.

(ii) If the unpaid loan balance plus recoverable costs exceeds the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody.

Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the state Director.

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid by preparing Standard From 1034, "Public Voucher for Purchases and Services Other Than Personal," and processing Form FmHA 2024–1, "Miscellaneous Payment System," or Form Ad 838, "Purchase Order" and processing Form FmHA 838B, "Invoice-Payment Certification," as appropriate, according to FmHA Instruction 2024–A (available in any FmHA office) and the respective FMI's.

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2) or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§ 1955.57 Real property containing underground storage tanks.

Within 30 days of acquisition of real property into inventory, FmHA must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under: (i) The Natural Gas Pipeline Safety Act of 1968; (ii) the Hazardous Liquid Pipeline Safety Act of 1979; or (iii) for an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA inventory property with a reportable underground storage tank will be informed of the reporting requirement, and provided a copy of the form filed by FmHA.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA will comply with such requirements and a State supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

§§ 1955.58–1955.59 [Reserved]

§ 1955.60 Inventory real property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of this part.

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State law permits and *OGC has given authorization,* eviction may be affected through State courts rather than Federal courts. In those cases, a State supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time

specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA loan account, if any.

(iii) To the borrower, if whereabouts are known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs. Refer to FmHA Instruction 2024–A (available in any FmHA office) for guidance.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file. For farm property, the County Committee will classify or reclassify real property that is farmland as being suitable for farming operations for disposition as suitable property unless the property, including property subdivided, cannot be used to meet any general farm purposes including being used as a start-up or add-on parcel of farmland. Refer to § 1955.53 of this subpart for guidance.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus. Farm property will be classified by the applicable County Committee. Property acquired under the CONACT which is originally classified as suitable may be reclassified as surplus because of physical damage such as fire, flood, sheet erosion or falling water table, which occurs, or change in economic conditions such as rising cost of production inputs, viable market outlets and obsolescence, which affect its suitability for program purposes, or, if not sold within three years after acquisition, it must be declared surplus. The 3-year period will be extended to compensate for any period of time the property was withheld from the market because its sale may have had a negative impact on farm real estate values or other administrative reasons. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Grouping and subdividing farm properties larger than family-size.* The County Supervisor will subdivide farm properties larger than family size whenever possible into parcels for the purpose of creating one or more suitable farm properties based on recommendations from the County Committee. Such land shall be subdivided into parcels of land the shape and size of which are suitable for farming, the value of which shall not exceed the insured farm ownership loan limit of $200,000. The County Committee decision will be documented on Form FmHA 440–2, "County Committee Certification or Recommendation." In addition, a map of the property showing the new boundaries will also be attached to Form FmHA 440–2. The County Supervisor may also group two or more individual properties into one or more suitable farm properties based on recommendations from the County Committee. The environmental effects will also be considered pursuant to Subpart G of Part 1940 of this chapter. Also refer to § 1955.140 of Subpart C of this part. The State Director, with prior approval of OGC, may issue a State supplement addressing any applicable State laws. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

(c) *Housing property.* Property which secured housing loans will be classified as "program" or "nonprogram." Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-program dwelling as nonprogram simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made program, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as program may be reclassified as nonprogram if physical damage occurs which is not economically feasible to repair. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. Where a SFH property is situated on land in excess of a minimum adequate site as defined in § 1944.11 of Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-program dwelling as nonprogram solely because it is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property

may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(d) *Authority for determining suitability*—(1) *County Committee.* The County Committee will determine suitability of farm property, with the advice of the County Supervisor if the committee is uncertain of the proper classification.

(2) *County Supervisor.* The County Supervisor will determine suitability of SFH property with the advice of the District Director if the County Supervisor is uncertain of the proper classification for the SFH property.

(3) *District Director.* The District Director will assist the County Supervisor in determining suitability of SFH property as provided in paragraph (c) of this section.

(4) *State Director.* The State Director will determine suitability of all types of property other than farm property. With the recommendations of the District Director, the State Director will make determinations on MFH property.

§ 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of the inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3b (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy.* After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or eligible for listing on the National Historic Register of Historic Places in whole or in part will be repaired as necessary to protect their Historic integrity after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except for SFH and MFH properties being sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH.* SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s) landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Nonprogram property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103 of Subpart C of this part will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of this part will apply. To be economically feasible, repairs should increase the expected "as is" sale price by at least the cost of the repairs.

(2) *MFH.* MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in an "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of this part is subject to the occupancy restrictions set forth in § 1955.116 of Subpart C of this part.

(3) *Farm property.* Except as provided in paragraph (a) of this section, only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place the farm in marketable condition. Conservation of soil, water and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS), through the development of conservation practices for the farm property. The County Supervisor will request that the SCS identify the location of any highly erodible land and recommend specific conservation practices to control erosion. The County Supervisor will carry out those conservation practices that are essential to preserve and protect the property and to place it in marketable condition. Any differences between FmHA and SCS regarding the need for a certain practice will be resolved in the manner indicated in § 1955.137(c)(2) of Subpart C of this part. Recommendations will also be requested from the U.S. Fish and Wildlife Service regarding fish and wildlife conservation measures. See Exhibit A of FmHA Instruction 2000–LL (available in any FmHA office) for further information.

(4) *Property other than housing and farms.* Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Authority.* Program and contracting authority is contained in FmHA Instruction 2024–A (available in any FmHA office).

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority.*—(1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase

arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is approporiate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," subject to FmHA's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in Exhibit J, paragraph II C, "Procurement Preference Program," of FmHA Instruction 2024–A (available in any FmHA office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA Instruction 2024–A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparer of his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 2024–A (available in any FmHA office).

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form AD 838 or SF 1034 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate in accordance with the respective FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of SF 1034 or AD 838 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, according to the respective FMIs.

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

§ 1955.66 Lease of real property.

When inventory real property, other than MFH properties, cannot be sold promptly, or when costodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the leasee or FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a costodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart. The requirements of Subpart G of Part 1940 of this chapter will also be met for all leases.

(a) *Authority to approve lease of property*—(1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property.*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farmer Program loan must first be considered for Homestead Protection in accordance with Subpart S of Part 1951 of this chapter. In addition, the former owner, spouse and child(ren) of the former owner and any entity members must first be considered for leaseback/buyback in accordance with Subpart S of Part 1951 of this chapter.

(B) The County Supervisor may approve the lease of farm property when a feasible plan of operation can be developed in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(C) When a lease with an option to purchase is signed, the lessee should be told that FmHA cannot make a commitment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event and the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Govenment and the purchaser of the property.

(D) The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property.

(E) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. All prospective lesses will be notified in writing of the presence of highly erodible land, converted wetlands and wetlands on inventory property. This notification will enclose a copy of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetland or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of Subpart G of Part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity. Additionally, a copy of Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955–20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for farm property*—(1) *Farm plans.* All prospective lessees will be required to submit a farm plan for the upcoming crop year and to submit evidence of their income. The County Supervisor must determine that the prospective lessee has the financial resources and farm management skills and experience that are sufficient to assure a reasonable prospect that the terms of the lease can be fulfilled. The County Supervisor may require verification of income and/or a credit report (to be paid for by the prospective lessee).

(2) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective lessees are reached in the marketing area who traditionally would not be expected to lease FmHA farm inventory properties or apply for farm ownership loan assistance because of existing racial or ethnic prejudice. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1910 of this chapter.

(3) *Rights of previous owner and notification.* For leaseback/buyback rights of former borrower/owners, refer to Subpart S of Part 1951 of this chapter. Grazing Association, Indian Land Acquisition, and other organization type loans as defined in § 1955.53 of this subpart, are not subject to the leaseback/buyback and Homestead Protection provisions of Subpart S of 1951 of this chapter.

(d) *Property securing Farmer Program loans located within an Indian Reservation.* (1) If real property securing a Farmer Program loan is located within an Indian Reservation and the owner or

former owner is a member of such Indian tribe, such member-owner will be offered leaseback/buyback rights pursuant to Subpart S of Part 1951 of this chapter. State Directors will contact the Bureau of Indian Affairs Agency supervisor to determine the boundaries of Indian Reservations and Indian allotments. A State supplement will be issued to identify the boundaries of such Indian Reservations and Indian allotment lands. If the former owner is a member of the tribe and does not want to exercise leaseback/buyback rights, the spouse and children of the former member-owner will be offered leaseback/buyback rights pursuant to Subpart S of Part 1951 of this chapter. The previous operator of property located within an Indian Reservation whose former owner is a member of the tribe having jurisdiction of such property is not entitled to leaseback/buyback rights and will not be notified.

(2) The tribe of which the former owner is a member will also be notified by letter, similar to Exhibit B of this subpart, at the time FmHA acquires the property, of the potential of such member-former owner's property being available for leaseback/buyback and advise the tribe of additional leaseback/buyback priority rights as follows (unless the tribe shall have established a different priority order for these additional leaseback/buyback rights):

(i) To an Indian member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) If any individual, Indian corporate entity or Indian tribe covered in paragraphs (d)(1) and (d)(2) wishes to lease or purchase the property, the County Supervisor must determine the prospective lessee or purchaser has the financial resources and management skills and experience that is sufficient to assure a reasonable prospect that the terms of the lease or purchase agreement can be fulfilled. Adverse decisions will be appealable pursuant to Subpart B of Part 1900 of this chapter.

(4) If the real property is not leased or purchased by any individual, Indian corporate entity or Indian tribe pursuant to paragraphs (d)(1) and (d)(2) and all appeals have concluded, the State Director shall transfer the property to the Secretary of the Interior.

(5) Properties within a reservation formerly owned by entities and non-tribal members will be treated as regular inventory that is not located on an Indian Reservation and disposed of pursuant to this subpart and Subpart C of this part. Leaseback/buyback rights will be given to the former owner, spouse, or children of the former owner, as well as any previous operators as outlined in Subpart S of Part 1951 of this chapter.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations in the lease in accordance with the FMI for Form FmHA 1955–20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property in a flood or mudslide hazard area.* Inventory property located in areas identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(g) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA.

(h) *Lease of farm property with option to purchase.* Except for property that was pledged to secure a loan to an organization, a lessee may be given the option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the lower of the capitalization value or the market value, as of the date the option is exercised, of the farm as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." If there is more than a 5 percent difference between the market value and the capitalization value, the appraisal will be reviewed by the State Director's designee. The reviewer will determine if the appraisal values are adequately supported. A lease with option to purchase to individuals with leaseback/buyback rights in accordance with Subpart S of Part 1951 of this chapter will be from 1 year up to 5 years. The lessee with leaseback/buyback rights will select the term of the lease. For those individuals that do not have leaseback/buyback rights, a lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price. Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with Subpart F of Part 1942 of this chapter. For Preservation Loan Programs, refer to Subpart S of Part 1951 of this chapter. Denials of applications for or disputes over terms and conditions of a lease are appealable, pursuant to Subpart B of Part 1900 of this chapter.

(i) *Advertising farm property for lease.* Advertisement is not required when an existing lease will be renewed or renegotiated with the present lessee or when the property is being offered

pursuant to leaseback/buyback. Otherwise, to assure fair and equitable treatment to all interested parties, public notice will be given of the availability of each inventory property for lease. Public notice means, as a minimum, advertisement in a newspaper or periodical that has a major circulation in the area where the inventory property is located. The public notice shall include as a minimum:

(1) All of the applicable qualifications, terms, conditions, restrictions, and stipulations associated with the lease, and how and when a lessee will be selected;

(2) A description of the property including its location and the presence of any natural hazards such as floodplains, wetlands and special mudslide hazard areas;

(3) The closing date and time for receiving written offers to lease;

(4) The terms of the lease;

(5) A statement that the Government reserves the right to reject all offers to lease;

(6) A statement that the property will be leased without regard to race, color, religion, sex, age, national origin or marital status.

(j) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(k) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit with advice from the State Office staff is requested. Security deposits will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit will be requested by memorandum to return the deposit to the servicing office for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate.

For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ——, formerly owned by ————.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(l) *Lease form.* Form FmHA 1955–20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial or inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(m) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(n) *Termination of lease of inventory property.* When a lease is terminated, or when the property is sold before expiration of the term shown of the lease submitted to the Finance Office, the servicing offical will notify the Finance Office of the termination and the effective date of termination according to the FMI for Form FmHA 1955–20.

(o) *Leasing after expiration of Leaseback/Buyback rights.* Except for property covered by paragraph (d) of this section, once all rights under leaseback/buyback (see Subpart S of Part 1951 of this chapter) have expired, the property may be leased in accordance with the provisions of this subpart or sold in accordance with the provisions of Subpart C of this part.

(p) *Socially disadvantaged program.* Inventory farms will be targeted for socially disadvantaged loans as authorized in § 1943.13 of Supbart A of Part 1943 of this chapter.

§ 1955.67 Payment of liens

(a) If real estate was acquired subject to a lien, the servicing official may authorize payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost. If it is later determined that continuing to make payments on prior liens is no longer in the best interest of the Government for reasons such as, but not limited to, declining property values or uninsured property losses, the State Director may:

(1) Convey the property to the prior lienholder if the lienholder will agree to accept the conveyance in full satisfaction of the prior lien; or

(2) Discontinue payments to the lienholder, and allow the lien to be foreclosed.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF–1034 and Form FmHA 2014–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of Taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A state supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate

taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable or program property.* When property is suited for program purposes, the servicing official will prepare SF 1034 and process Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Nonprogram (NP) housing property.* When property is classified as NP and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additonal premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area *and* operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this seciton. If, however, the prior lienholders mortgage requires the borrower to carry insurance, FmHA may provide the required insurance, if necessary, to prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, wherever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy of the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director, after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; the State Director may redelegate this authority to County Supervisors or District Directors.

§§ 1955.73–1966.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office).

(b) *Contracting for services.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120–10 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955–50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the

authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83–1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0110.

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration

Note.—This memorandum is available in any FmHA office.

Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase

(To Be used by FmHA To Notify Tribe of Leaseback/Buyback)

From: County Supervisor
To: [Name of Tribe and address]
Subject: Availability of Farm Property for Lease or Purchase
[To be used After 190-Day Period Has Expired]

Recently Farmers Home Administration (FmHA) acquired title to —— acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was ————. We have advised the previous owner of leaseback/buyback rights and in the event the previous owner, previous owner's spouse, or children do not enter into a lease or purchase agreement by (enter the date 190 days after the date of acquisition), the property will be available to lease or purchase to persons who are members of your tribe, an Indian Corporate entity, or the tribe itself. Our regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase and/or lease of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FmHA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to lease and/or purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to lease and/or purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FmHA County Office of your selection or intentions within 45 days of receipt of this letter, regarding the lease and/or purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to lease or purchase the property, but is unable to do so at this time, contact with the FmHA County Office should be made.

Sincerely,

County Supervisor.

Subpart C—Disposal of Inventory Property

56. Section 1955.102 is revised to read as follows:

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that will enable a qualified applicant for one of Farmers Home Administrations (FmHA's) loan programs to meet the objectives of that loan program, preference will be given to the program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: to sell CONACT property as Rural Housing (RH) property; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

57. Section 1955.103 is amended by revising the definitions of CONACT or CONACT property, Suitable property and Surplus property and by adding in alphabetical order the definitions of Capitalization value, Farmer Program loans, Leaseback/Buyback, Homestead Protection, Indian reservation, Owner, Previous operator and Socially disadvantaged applicant to read as follows:

§ 1955.103 Definitions.

* * * * *

Capitalization value. The value determined in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

* * * * *

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

Farmer program loans.. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

Homestead protection (FP only). The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See Subpart S of Part 1951 of this chapter.

Indian Reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the

Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian Tribe.

* * * * *

Leaseback/Buyback (FP only). The program which permits certain former owners and certain former operators to repurchase or lease their former farm. See Subpart S of Part 1951 of this chapter.

* * * * *

Owner. An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

* * * * *

Previous operator. An individual or an entity who based the farm which collateralized a CONACT loan and conducted the day to day business at the time the farm was taken into inventory. The previous operator does not need to be an FmHA borrower.

* * * * *

Socially disadvantaged applicant. An applicant/borrower who, because of their identity as a member of a group, has been subjected to racial or ethnic prejudice or cultural bias without regard to their individual qualities.

Suitable property. Property other than SFH or MFH that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, farmland that can be used for general farming purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. Such farmland should produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm or a part of a farm rather than a rural residence. Farmland will be classified as suitable regardless of its size, value, or quality unless the County Committee determines it cannot be used for farming purposes. The County Committee suitability determination is independent of any decision by FmHA to make or not to make a farm ownership loan on the property. Leaseback/buyback rights will be offered in accordance with Subpart S of Part 1951 of this chapter whether or not the property is considered surplus or suitable.

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section, that is neither farmland, nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real estate property which is not sold within 3 years after acquisition. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulations compensate for the period of time the property was not available for sale.

58. Section 1955.105 is revised to read as follows:

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106–1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Reserve Conservation and Development (RC&D); Watershed (WS); Association Recreation; EOC: Rural Renewal; Water Facility; Business and Industry (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporation (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Leaseback/Buyback and Homestead Protection, as set forth in Subpart S of Part 1951 of this chapter, are only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) *Controlled substance conviction.* In accordance with the Food Security Act of 1985 (Pub. L. 99.198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(c) *Effects of farm property sales on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this Part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (a)(3) and (a)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the lease, conservation practices specified by the SCS and approved by the FmHA as a condition for sale. Refer to § 1955.137(d) of this subpart for implementation requirements.

59. Sections 1955.106 through 1955.108 are revised and redesignated as §§ 1955.107 through 1955.109 and § 1955.109 is revised and redesignated as § 1955.106 to read as follows:

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before any farm property which secured a Farmer Program loan is

sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Subpart S of Part 1951 of this chapter) and Homestead Protection program (see Subpart S of Part 1951 of this chapter). If the farm property which secured a Farmer Programs loan is located within an Indian Reservation and the former owner is a member of the Tribe that has jurisdiction over the reservation, their Leaseback/Buyback rights will be given pursuant to § 1955.66(d) of Subpart B of this part.

(b) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the County Supervisor will make a special effort to insure that prospective purchasers who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial or ethnic prejudice or cultural bias are informed of the availability of the social disadvantaged program. Emphasis will be placed on providing assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1943 of this chapter. Suitable farm inventory property that has been targeted for socially disadvantaged individuals will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located.

(c) *Non Program (NP) borrowers.* Non Program (NP) borrowers are not eligible for leaseback/buyback or Homestead Protection provisions as set forth in Subpart S of Part 1951 of this chapter. When it is determined that all conditions of § 1951.558(b) of Subpart L of Part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for leaseback/buyback and Homestead Protection.

§ 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955–105(c) of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to program applicants in accordance with FmHA regulations that apply to the appropriate loan program. Real property will be managed in accordance with the provisions of Subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.108 of this subpart.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least, twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale," will be posted in a prominent place in the County Office. If a program applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian Reservations as defined in § 1955.103 of this subpart shall be responsible for notifying those parties listed in § 1955.66(d)(2) of Subpart B of this part.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Except for farm property, property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale. Farm property will be sold for the lower of the market value or the price that reflects the average income that may be reasonably anticipated to be generated from farming such property. Therefore, the price will be the lower of the capitalization value or the market value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). If the capitalization value and the market value vary as much as 5 percent, the appraisal will be reviewed by an appraiser designated by the State Director to determine if the appraisals are supported by comparable sales data.

(d) *Credit sale procedure.* A credit sale to program applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales.

(2) The County Committee will certify to the applicant's eligibility on Form FmHA 440–2 in accordance with program eligibility requirements when required by the FmHA regulation that applies to the appropriate loan program.

(3) Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(4) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(5) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(i) Form FmHA 1955.49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of General Counsel (OGC) will be used.

(ii) The buyer will pay attorney's fee and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(6) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955.50, "Advice of Inventory Property Sold," according to the FMI.

(7) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(e) *Selection of purchaser.*(1) *Nonfarm property.* Except for farm property, when more than one acceptable offer is received during business hours on the same day, the order in which they will be considered in time order received. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.

(2) *Farm property.* Suitable farmland may only be sold to operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family-sized farms, as determined by the County Committee. However, suitable farmland larger than family size, may be sold to the former owner or the spouse or the child(ren) of the former owner in accordance with leaseback/buyback provisions of Subpart S of Part 1951 of this chapter. Any credit sale of a suitable farm larger than the family-size farm would be at ineligible rates and terms. In determining if the property is a family.size farm, the County Committee should refer to the definitions of family farm and farm as outlined in § 1943.4 of Subpart A of Part 1943 of this chapter. In selling suitable farmland, priority must be sold to persons eligible for FP loans, including individuals approved for, but who, as of January 6, 1988, have not received such loans. If two or more eligible operators of not larger than family-sized farms, as of the time immediately after the contract of sale or lease is entered into. wish to purchase a suitable farm, the County Committee will make the selection. The reasons explaining the County Committee's selection of the applicant will be fully documented on Form FmHA 440.2. The County Committee will give a priority to those eligible individuals that have pending applications filed but have not received the loan assistance and make a selection from those eligible individuals that have the greatest need for farm income and best meet the criteria for eligibility, for farm ownership loan assistance (refer to § 1943.12 of Subpart A of Part 1943 of this chapter).

§ 1955.108 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under Homestead Protection and Leaseback/Buyback provisions of Subpart S of Part 1951 of this chapter surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Property which has been classified as suitable will be held in inventory for 3 years. If during the 3 year period, the property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 3 year period will be extended to compensate for the period of time the property was not available for sale. After the 3 year term the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands and wetlands on inventory property.

(a) *Rate and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with Subpart S of Part 1951 of this chapter. Surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus 1/2 percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for all other surplus property will be the current Farmer Programs ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a downpayment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

(b) *Advertising sale of surplus property.* When possible, the sale of surplus CONACT property should be handled by County Supervisors and District Directors. FmHA will advertise for sale surplus property for sealed bid, negotiated sale or auction by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale." will be posted in a prominent place in the County Office.

(c) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction after it has been in inventory for 3 years. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least _____*_____ percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.] Equally acceptable sealed bid offers will be decided by lot, except for the sale of farm property, when an acceptable sealed bid from an operator of not larger than family-size farms wish to purchase a farm property, the County Committee will select the operator. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority to those eligible individuals that have pending applications filed but have not received the loan assistance and make a selection from those eligible individuals that have the greatest need for farm income and best meet the criteria for eligibility, for farm ownership loan assistance (refer to § 1943.12 of Subpart A of Part 1943 of this chapter).

(d) *Negotiated sale.* If no acceptable bid is received either from a bid sale or at a public auction, the State Director may sell surplus property or suitable property which has been in inventory for 3 years at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on the farm real estate values or for other administrative purposes, such as

statutory or proposed regulation revisions, the 3-year period will be extended to compensate for the period of time the property was not available for sale. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less then ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least _____*_____ percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 available in any FmHA office) for the current percentage.] Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other part except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143. "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," will be used to obtain other purchases and services. In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(e) *Sale through real estate brokers.* The State Director may authorize use of real estate brokers to sell surplus CONACT real property at the market value in accordance with § 1955.130 of this subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application including financial information required for the respective loan program.

(b) *Credit sale approval authority for Farmer Program loans.* County Supervisors, District Directors and State Director are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter (available in any FmHA office.) County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales or ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(c) *Form of payment.* Payments at closing will be made in the form of cash, cashier check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(d) *Farm real property.* Upon acceptance by the approval official, County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(e) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955–45 or FmHA 1955–46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(f) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's downpayment.

(g) *Closing and reporting sales.* Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the FMI.

(h) *Classification.* Credit sales on ineligible terms will be classified NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modification to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

60. Section 1955.122 is amended by redesignating paragraphs (a) through (d) as (b) through (e), revising newly designated paragraphs (b) and (e) and adding new paragraphs (a) and (f) to read as follows:

§ 1955.122 Method of sale (chattel).

* * * * *

(a) *Repurchase by former borrower-owner.* "If the former borrower-owner is participating in Leaseback/Buyback and/or Homestead Protection, the former borrower-owner will have the first opportunity to repurchase the chattel property which may have been conveyed to FmHA by the borrower. The sale will be for market value and may be for cash or a FmHA credit sale. Prior to the borrower conveying chattel property to FmHA, the County Supervisor may enter into an agreement with the borrower, as part of a leaseback/buyback Agreement or Homestead Protection Agreement (Exhibits K and O of Subpart S of Part 1951 of this chapter) to permit the borrower to repurchase the chattel property upon FmHA's acquisition of the

real estate and chattel property. The borrower must repurchase all chattel property conveyed to FmHA and may not pick and choose items to purchase. If the spouse or children of the previous owner, entity members of the previous owner or the immediate previous operator are leasing or purchasing the property under the leaseback/buyback program, such person may also have first opportunity to purchase all chattels conveyed to FmHA at the time the previous owner conveyed the real property.

(b) *Regular sale.* Chattels will be sold by FmHA employees at market value to program applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

* * * * *

(e) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least _____*_____ percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale "A"—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). A State supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

(f) *Notification.* In many States the original owner of the chattel property must personally be notified of the sale date and method of sale within a certain time prior to the sale. The State Director then will issue a State supplement clearly stating what notices are to be sent, if any. County Supervisor will review State supplements to determine what notices must be sent to the previous owner of the chattel property prior to FmHA taking action to sell the property.

61. Section 1955.123 is amended by revising paragraph (a) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high=priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least _____*_____ percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed five years. The interest rate for the ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Form FmHA 431–2, Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other financial statement considered appropriate may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office.) The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901–A (available in any FmHA office.)

* * * * *

62. Section 1955.128 is revised to read as follows:

§ 1955.128 Appraisers.

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator, Housing, when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. For Farmer Program properties, the fee appraisers must include the market value of the property and the value determined by the annual production value or capitalization value. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers.) Appraisers may not purchase property they have appraised.

63. Section 1955.139 is amended by revising the section heading, the introductory text of paragraph (a)(3), paragraphs (a)(3)(i)(A), (a)(3)(i)(B) and (a)(3)(iii) and adding paragraphs (a)(3)(v), (a)(3)(vi) and (c) to read as follows:

§ 1955.139 Disposition of real property rights and title to real property.

* * * * *

(a) * * *

(3) For farm properties only, easements, restrictions, or the equivalent thereof may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a unit of local, State, or Federal government or a private nonprofit organization.

(i) * * *

(A) Fish and wildlife habitats of local, regional, State, or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

* * * * *

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local, State, Federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA financial interest, the State Director will submit the proposal to the Administrator for approval unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial

interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

* * * * *

(v) For FP cases except when FmHA has an affirmative responsibility to place a conservation easement upon a farm property, easements under the authority of this paragraph will not be established unless either the rights of all prior owner(s) have been met or the prior owner(s) consents to the easement. Examples of instances where an affirmative responsibility exists to place an easement on a farm property include wetland and floodplain conservation easements required by § 1955.137 of this subpart or easements designed as environmental mitigation measures and required in the implementation of Subpart G of Part 1940 of this chapter for the purpose of protecting federally designated important environmental resources. These resources include: Listed or proposed endangered or threatened species, listed or proposed critical habitats, designated or proposed wilderness areas, designated or proposed wild or scenic rivers, historic or archaeological sites listed or eligible for listing on the National Register of Historic Places, coastal barriers included in Coastal Barrier Resource Systems, natural landmarks listed on national Registry of Natural Landmarks, and sole source aquifer recharge as designated by the Environmental Protection Agency.

(vi) For FP cases whenever a request is made for an easement under the authority of this paragraph and such request overlaps an area upon which FmHA has an affirmative responsibility to place an easement, that required portion of the easement, either in terms of geographical extent or content, will not be considered to adversely impact the value of the farm property.

* * * * *

(c) *Transfer of farm inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FmHA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property, or an interest therein, meeting of any one of the following three criteria and subject only to farmer program 1easeback/buyback and Homestead Protection rights of all previous owners and operators having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that SCS has determined to be either highly erodible or generally not used for cultivation, such as soils in classes IV, V, VII or VIII of SCS's Land Capability Classification, or

(ii) A predominance of land being environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500–3.

(B) Riparian zones and floodplains as they pertain to Executive Order 11988.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resource Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat, for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (e.g., Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharge areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are inholdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to develop if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) Whenever a State or Federal agency requests title to suitable or surplus property, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transaction based on demonstrated capability and experience in processing such transfers. The State Director will provide the following information regarding the request:

(i) Certification that the rights of all prior owners and other individuals, as outlined in Subpart S of Part 1951 of this chapter, have expired.

(ii) Determination that the land is suitable or surplus and the rationale for that determination.

(iii) A statement of the factual basis for determining the land to be of marginal value for agricultural production, environmentally sensitive, or having special management importance, with particular discussion of any national benefits to be achieved (e.g., migratory bird and wetland conservation).

(iv) Identification of the requesting agency and the recommended conservation use if a transfer of inventory land were to occur.

(v) Views of the U.S. Fish and Wildlife Service relative to the need for wetland and floodplain deed restrictions as required by § 1955.137(b) of this subpart. These deed restrictions must be in effect at the time of transfer of inventory lands to any non-Federal entity. Transfer to another Federal entity will only be considered where proper wetland and floodplain precautions have been agreed to by the Federal entity.

(3) *Determining priorities for transfer of inventory lands.*

(i) A Federal entity will be selected over a State entity since the transfer of inventory land involves Federally owned/administered land.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purpose(s) for which this transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(4) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (e.g., Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to habitat of national importance (e.g., wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without

reimbursement, over other land disposal alternatives.

(5) An individual property may be subdivided into parcels and a parcel(s) can be transferred under the requirements of this paragraph as long as the remaining parcel(s) to be sold make up a viable sales unit, suitable or surplus.

* * * * *

64. Section 1955.140 is revised to read as follows:

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property other than Farmer Program may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the County Supervisor, based on the recommendations of the County Committee, will subdivide the property into one or more suitable farm tracts and the suitable tracts will be sold to program applicants in accordance with § 1955.107 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.108 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of property must not change its character from program/suitable to NP or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110 percent of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The County Supervisor, based on the recommendations of the County Committee, for FP cases and the State Director for all other cases may authorize the combining of two or more individual properties into a single parcel for sale as a suitable program property.

PART 1962—PERSONAL PROPERTY

65. The authority citation for Part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

66. Section 1962.4 is amended by removing all paragraph designations, adding an introductory paragraph and by revising the definition of "Borrower" and adding in alphabetical order the definitions of "Basic security" and "Normal income security" to read as follows:

§ 1962.4 Definitions.

As used in this subpart, the following definitions apply:

* * * * * *

Basic security. Consists of all equipment serving as security for FmHA loans. It also consists of real estate and all foundation herds and flocks, including replacements, which serve as a basis for the farming operation outlined in the Farm and Home Plan or yearly budget which serve as security for FmHA loans. With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * * *

Normal income security. All security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herd or flock. that is the basis of the farming or other operation, and is the basic security for a Farmers Home Administration farmer program loan.

* * * * * *

67. Section 1962.6 is amended by revising paragraphs (c)(1)(iv), (c)(2)(ii) and (c)(3)(ii) to read as follows:

§ 1962.6 Liens and assignments on chattel property.

* * * * * *

(c) * * *

(1) * * *

(iv) For only the amount anticipated for payment as indicated on Form FmHA 1962.1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable upland cotton, rice, wheat and feed grain programs.

(2) * * *

(ii) Obtain assignments from selected borrowers on Form ASCS–36, "Assignment of Payment," which will be obtained from the ASCS County Office.

(3) * * *

(ii) Checks obtained as a result of an assignment will be made only to FmHA, and the proceeds used as indicated on Form FmHA 1962–1.

68. Section 1962.8 is amended by revising the introductory text to read as follows:

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

* * * * * *

69. Section 1962.13 is amended by revising the introductory text to read as follows:

§ 1962.13 Lists of borrowers given to business firms.

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. County Supervisors should prepare the list of potential purchasers' which are named on the borrower's Form FmHA 1962–1. FmHA will not distribute the Form FmHA 1962–1.

* * * * *

70. Section 1962.17 is amended by revising paragraphs (a)(2), (b)(2) and (b)(5) and adding paragraph (a)(3) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) * * *

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is a current Form FmHA 1962–1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter, written explanation of the reasons for denial, and an opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time. Immediately upon determining that the borrower does not have a current Form FmHA 1962–1 in the file, the County Supervisor should also begin working with the borrower to develop one.

(3) If the borrower requests a change(s) to Form 1962–1, the County Supervisor will revise the form, initial and date each change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962–1, mark the form revised and notify the borrower, in writing, to confirm that the change(s) have been approved or denied.

(b) * * *

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) Form FmHA 1962–1 must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and Commodity Credit Corporation payments so that the borrower can pay essential family living and farm operating expenses.

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses: Household operating; food including lunches; clothing and personal care; health and medical expenses including medical insurance; house repair and sanitation; school, church, recreation; personal insurance; transportation; furniture; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreements; rent on equipment, land, and buildings; feed for animals; seed; fertilizer; pesticides, herbicides, and spray materials; farm supplies not included above; livestock expenses including medical supplies, artificial insemination and veterinarian bills; machinery hire; fuel and oil; personal property tax; real estate taxes; water charges; property and crop insurance; auto and truck expenses; utilities payments; and payments on contracts or loans secured by farmland, necessary farm equipment, livestock, or other chattels. An item of essential farm machinery which breaks beyond repair may be replaced when it is determined that replacement is a better choice than alternatives such as the lease of a similar piece of machinery or the hiring of the service. The State Director must approve all requests for the replacement of essential farm machinery.

(iii) All of the items listed in paragraph (b)(2)(ii) may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation and what would be an efficient method of production considering the borrower's resources. The County Supervisor will refer to Exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released.

(iv) Proceeds can be applied to the FmHA debt.

(v) Proceeds can be used to purchase property better suited to the borrower's need if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(vii) Property can be exchanged for property which is better suited to the borrower's need if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(viii) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

* * * * *

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962–1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA *must* give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: Feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962-1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see § 1924.57(d) of Subpart B of Part 1924 of this chapter.

* * * * *

71. Section 1962.29 is amended by revising the introductory text of paragraph (b), redesignating paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5) and adding a new paragraph (b)(2) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel and crop security from FmHA loan funds when:

* * * * *

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance.

* * * * *

72. Section 1962.34 is amended by revising paragraph (a)(2) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965–13, "Assumption Agreement (Farmer Programs Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

73. Section 1962.40 is amended by revising the introductory text of paragraphs of (b) and (e)(1), revising paragraph (b)(3) and adding paragraph (f) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loans cases, borrowers must receive Exhibit A and Attachments 1, 2 and any additional notice(s) required by Subpart S of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

* * * * *

(3) *Agreement with borrower.* If the borrower does not request a hearing, fails to return the Attachment 2 of Exhibit A required by Subpart S of Part 1951 of this chapter within 45 days, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter. After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account, the County Supervisor may allow the borrower 60 days to accomplish such action by:

(i) Selling the security in accordance with § 1962.41 of this subpart;

(ii) Transferring the security in accordance with § 1962.34 of this subpart;

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter; or

(iv) Refinancing the debt with another lender.

* * * * *

(e) * * *

(1) After Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

* * * * *

(f) When a borrower's security property is liquidated voluntarily or involuntarily and there is an unpaid balance on the account, the County Supervisor will meet with the borrower within 30 days to assist the borrower in developing a debt settlement offer in accordance with Subpart B of Part 1956 of this chapter.

74. Section 1962.41 is amended by revising the introductory paragraph and revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter before any sale occurs.

* * * * *

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the County Supervisor will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan account(s). If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the Committee, and be further processed and approved in accordance with § 1962.34(h) of this subpart:

In our opinion *(name of Borrower and any co-signer)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form FmHA 1965–8, "Release From Personal Liability" will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter

(available in any FmHA office). The account will then be considered for debt settlement.

75. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c) (5)(i), and revising paragraphs (c)(5)(ii), (c)(6)(ii)(A) and (d) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security on EO property by the County Supervisor.

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security, a borrower and all cosigners on the note must receive Exhibit A and Attachment l, 2, and any other additional notices required by of Subpart S of Part 1951 of this Chapter and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

* * * * *

(c) * * *

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 1955–41, "Notice of Sale," may be used for public or private sales.

* * * * *

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 1955–41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) * * *

(ii) * * *

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 1955–41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

* * * * * *

(d) *Risk of injury.* If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third-party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40 (e) of this subpart.

76. Section 1962.47 is amended by revising paragraphs (a)(3), (c)(3) and (c)(4)(i) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) * * *

(3) The County Supervisor will send Attachments 1 and 2 of Exhibit A (and not Exhibit A) of Subpart S of Part 1951 of this chapter together with Exhibit D of this subpart, "Notice to Borrower's Attorney Regarding Loan Servicing Options," (available in any FmHA office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. A dated copy of Exhibit D of this subpart will be sent to OGC and the U.S. Attorney's office at the same time. Exhibit D of this subpart explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly.

(i) Exhibit D of this subpart also explains that borrowers who have filed Chapter 11, 12, and 13 bankruptcies must request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief or dismiss their bankruptcies. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. The stay should be modified for this purpose or the Chapter 11, 12, or 13 be dismissed; however, negotiation between a borrower and FmHA is permitted so long as the borrower supplies FmHA with a filed copy of the motion for relief from stay in those jurisdictions where OGC has advised FmHA that it is the customary practice of the local bankruptcy court not to sign an order granting limited relief from stay. If the bankruptcy court will sign these orders they should continue to be required prior to permitting the borrower to apply for servicing. If modification of the automatic stay is not requested, or the automatic stay is not modified for the limited purpose set out above or if the bankruptcy case is not dismissed, but the borrower instead files a plan of reorganization which restructures the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of FmHA's recommendation for voting on the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations.

(ii) Borrowers who have filed Chapter 7 bankruptcies also must either dismiss their bankruptcies or request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. Until the automatic stay is modified for the limited purpose set out above, or the borrower supplies FmHA with a filed copy of a motion for

relief from stay in those jurisdictions where OGC advises that the customary practice of the local bankruptcy court is not to sign an order providing limited relief from stay, or the Chapter 7 is dismissed, FmHA will not discuss the options with the borrower or the borrower's attorney. Exhibit D of this subpart explains that FmHA will not continue with a debtor who does not reaffirm the FmHA debt. If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation.

* * * * * *

(c) * * *

(3) In Chapter 11, 12 or 13 cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed, it will be accomplished after sending the attorney of the borrower Exhibit D of this subpart and Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any additional attachments required by Subpart S of Part 1951 of this chapter, unless the attorney was previously notified by the attachments of the specific default or delinquency.

(4) * * *

(i) Loans can be liquidated if a discharge hearing has been held *and* if the borrower has not reaffirmed the debt and if the property is no longer part of the estate. Liquidation can proceed prior to the discharge hearing if the borrower and the trustee agree or consent to the entry of an abandonment order and the lifting of the stay. Exhibit D of this subpart and Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any additional attachments required by Subpart S of Part 1951 of this chapter, unless the attorney was previously notified by these attachments of the specific default or delinquency. The borrower will be sent an acceleration notice (Exhibit E to Subpart A of Part 1955 of this chapter) and there will be no appeal of the acceleration. Then the account will be liquidated.

* * * * * *

77. Section 1962.49 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1962.49 Civil and criminal cases.

* * * * * *

(c) * * *

(1) *County Office actions.* Forms FmHA 455–1, "Request for Legal Action," and FmHA 455–22 will be prepared. Form FmHA 455–2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455–1 and FmHA 455–22 and, wh=n applicable, FmHA 455–2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455–1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455–1 and FmHA 455–22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in the case. If Attachments 1, 2 and other appropriate attachments to Exhibit A of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded.

* * * * *

78. Exhibit B of Subpart A is revised to read as follows: (**Note:** This revision was inadvertently not published in the **Federal Register** and the CFR when the revision was executed in 1980.)

Exhibit B—Memorandum of Understanding and Blanket Commodity Lien Waiver

The Farmers Home Administration (FmHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA and CCC in and without undue inconvenience to producers and FmHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA will try to furnish a complete and current list of the names of such producers; however, FmHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA and the producer if (a) his name is on the list furnished by FmHA, or (b) he names FmHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Dated: July 20, 1980.

Ray V. Fitzzerald

Executive Vice President, CCC

Dated: July 14, 1980.

Gordon Cavanaugh.

Administrator, FmHA

79. Exhibit D to Subpart A is revised to read as follows:

Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: FmHA Instruction 1962–A

Purpose: Used by a County Supervisor to send with Attachments 1 and 2 of Exhibit A (*not* Exhibit A) of Subpart S of Part 1951 of this chapter to the borrower's attorney when the borrower has filed bankruptcy. A dated copy of this letter will be sent to the United States Attorney's Office and OGC when it is mailed to the borrower's attorney.

RETURN ADDRESS

Borrower's Attorney Address

Dear

We were recently notified that your client (name of borrower) has filed bankruptcy. The enclosed forms explain some of the loan servicing options that FmHA has available. We would appreciate your informing your client of these options. In order to ascertain whether your client is eligible for these options it is necessary for FmHA's employees to work closely with your client. We are concerned about whether such contact will be in violation of the automatic stay.

*[If your client has filed under Chapter 7 and wants to apply for servicing relief from FmHA, the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. If your local jurisdiction does not sign orders providing limited relief from the automatic stay, please provide FmHA with a filed copy of your motion seeking limited relief from the automatic stay. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay or attempted modification, your client must complete and return Attachment 2 to Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing.

So long as the Chapter 7 is pending FmHA will not discuss any of the servicing options with you or your client unless the automatic stay is modified or you seek a modification and it is not customary for your local jurisdiction to approve such orders. Also, in order for FmHA to continue with your client after a discharge, your client must reaffirm the FmHA debt.]

*[If your client has filed under Chapter 11, 12 or 13 and wants to apply for servicing relief from FmHA the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. If your local jurisdiction does not sign orders providing for limited relief from the automatic stay, please provide FmHA with a filed copy of your motion seeking limited relief from the automatic stay. A sample motion and order are available from the U.S. Attorney's office. After dismissal, modification of the automatic stay, or attempted modification, your client must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. Unless the automatic stay is modified for this purpose or you seek such modification and it is not customary for your local jurisdiction to approve such orders, or the case is dismissed, FmHA will not discuss any of the servicing options with you or your client. You may, of course, choose to file a proposed plan which may or may not contain debt restructuring features similar to those available from FmHA.]

If you intend to file a motion to allow your client to request and be granted servicing relief, we ask that you do so within 45 days. If no motion is filed within that time, we will assume that your client does not intend to make a request for servicing and we will proceed to protect our interests as allowed by the Bankruptcy Code.

FmHA's farmer programs debt servicing regulation is found at 7 CFR, Part 1951, Subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor

*Choose applicable paragraph.

80. Exhibit E to Subpart A is added to read as follows:

Exhibit E—Releasing Security Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA should release to pay for particular items within these broad categories. For example, FmHA has to release for transportation expenses, but should FmHA release so that a borrower can buy a new car? If, at planning time, it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA 1962–1 can be completed to show that FmHA plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA 1962–1 to release for a used car or for gas and repairs to the borrower's present car. If it is necessary for FmHA to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for that broad purpose. However, nothing requires us to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA should release for operating expenses and over whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

FmHA Instruction 1962–17 of FmHA Instruction 1962–A states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable is restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses but when this is not possible, FmHA and the borrower must work together to decide which farm operating expense demand immediate attention and cannot be neglected and those are the essential expenses.

We absolutely must release to pay for *essential* family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

81. Exhibit F to Subpart A is added to read as follows:

BILLING CODE 3410-07-M

Exhibit F—Form FmHA 1962–1

USDA-FmHA
Form FmHA 1962-1
(Rev. 8-88)

Position 1

AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY

FORM APPROVED
OMB No. 0575-0111
Exhibit F

Name _____ Page _____ of _____

Date of Security Instrument _____ Period covered by Agreement _____ to _____

Property Description

PLANNED / ACTUAL

Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			

Property Description

PLANNED / ACTUAL

Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan	How	Mo.			Quan.	How	Date			

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Property Description

PLANNED					ACTUAL					
Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			

Property Description

PLANNED					ACTUAL					
Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			

Property Description

PLANNED					ACTUAL					
Disposition			Expected Amt. of Proceeds	Use of Proceeds	Disposition			Amt. of Proceeds	Use of Proceeds	Appr'd Yes/No *(initial)*
Quan.	How	Mo.			Quan.	How	Date			

Position 1

AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY

In this Agreement the Farmers Home Administration (FmHA) is referred to as *you* and *your*. _____

and _____, the borrower(s), is referred to as *I, me,* and *my*. My contact with you will be through the County Supervisor.

In exchange for loans received from the FmHA, I signed Security Agreements with the United States of America. By signing the Security Agreements, I have given you a security interest in all the property described in the Security Agreements. This property has been listed on this form. This property is called collateral.

Do I Have Written Consent to Sell?

I understand that I must obtain written consent from you before I can sell, exchange, feed to livestock, consume, or in any way dispose of collateral. This Agreement explains how the money or property received from the sale, exchange, or other disposition of collateral may be used. So long as I meet the terms of this Agreement, this Agreement acts as your written consent to dispose of collateral listed on this Agreement. I understand that this Agreement is not intended to restrict my ability to operate my farm or ranch efficiently. It is intended to describe how I will dispose of collateral and to record the sales, exchanges, or other dispositions of collateral.

What Collateral Will Be Sold?

I have listed on this form all collateral that I expect to sell, exchange, feed to livestock, consume, or otherwise dispose of between _____ and _____. I understand that you do not expect me to list each animal, bushel, bale, or pound of property I plan to dispose of, but that you do expect me to list an approximate number.

What is the Projected Date and Price of Sale?

I have listed the approximate date on which I will dispose of collateral. I understand this can be listed by month, quarter, or whatever period best suits my operation. I have also listed the price I expect to receive, and a description of how I plan to use the proceeds. I agree that I will dispose of collateral for its fair market value.

How Do I Project Dates and Prices?

I understand that all dates and figures listed on this form are projections only. You also acknowledge this as part of the Agreement. The figures reflect the crop yields, livestock production numbers, operating expenses, income, and marketing practices that I can reasonably expect, based on my farm records and experience.

The figures are based on my past income, expense, and production levels. You do not require a strict averaging of my past income, expense, and production levels when calculating these projections, and may permit adjustment of those averages to reflect unusually low or high yields, income or expenses that I have had in the past due to circumstances beyond my control. In reaching these figures, you will consider planned changes in my operation.

I understand that the dates and figures used on this form must be consistent with any current Farm and Home Plan or other plan of operation to which you and I have agreed.

When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses?

You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial, or indispensable

You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan(s).

You also agree to allow me to use livestock for food for my family.

What Happens if Someone Else Has a Security Interest in the Collateral I Sell?

I understand that the money from the sale of collateral must always be used to pay anyone who has a security interest that comes before FmHA's security interest.

What Changes Require Your Prior Approval?

I understand that If I want to sell, exchange, or dispose of collateral that is not listed on this form, I must obtain permission from you before I dispose of the collateral.

If I want to dispose of collateral in a way not listed in the "How" section of this form, I must obtain permission from you before disposing of the collateral. For example, if I have listed that all crops will be sold and later decide that some crop is needed for feed, I must obtain permission from you before feeding the crop to the livestock. You must grant permission if this action is necessary to meet essential family living or farm operating needs and if the livestock and livestock products are collateral for the FmHA loan(s).

If I want to use proceeds in a way not shown on the "Use of Proceeds" section of this form, I must obtain permission from you before the proceeds are used. For example if I listed that the proceeds from the sale of the crop would be used to pay on FmHA debt and later find that the money is needed to pay another farm operating expense, I must obtain your permission before that expense is paid. You must grant permission and change the form if the proceeds will be used for essential living or operating expenses.

What Changes Do Not Require Your Prior Approval?

I am not required to obtain your permission before I sell, exchange, or dispose of collateral even if the sale will require a change in the "Quantity", "Month", or "Expected Amount of Proceeds" sections on this form. However, if the sale does result in changes to the "Quantity" section of this Agreement due to higher or lower than expected crop yields or livestock production numbers, I must promptly report this to the County Supervisor. I must also promptly report to the County Supervisor any sale that results in a change to the "Month" or "Expected Amount of Proceeds" section of this form. The County Supervisor will then change this form accordingly.

How Do I Request and Report Changes and How are Changes Made?

I may request and report changes on the form by telephone, letter, or visit to the county FmHA office. A trip to the county FmHA office is not always necessary. I understand that when an agreement is reached on a requested change or when I report changes, the County Supervisor must revise the form, initial and date the change, and mark the form "revised". I will also initial the change.

My initials may be obtained by either (1) mailing a copy to me, or (2) asking me to initial the revised form during my next visit to the FmHA office.

If my requested or reported changes would result in a major change in my operation, the County Supervisor may request that I attend a conference. At that conference, the County Supervisor and I will develop a new Farm and Home Plan and revise this form.

What if You and I Do Not Agree?

If you and I disagree on how to complete or make changes on this form, you must send me a letter which describes the items on which we do not agree. The letter must explain why we do not agree. The letter must also tell me how I may appeal your decision.

Until the appeal is decided, you must release proceeds from the sale of collateral if I need those proceeds to meet essential family living and farm operating expenses. You must also release any other proceeds on which you and I have agreed.

When my appeal is decided, the County Supervisor will ask me to sign a new Farm and Home Plan and Form FmHA 1962-1, which reflects the decision on the appeal.

If I do not sign the new agreement, the County Supervisor will give me a copy of the forms and tell me that the Government considers this Agreement to be binding. If I violate this Agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

What Happens if I Do Not Cooperate?

I understand that if I do not appeal or if I refuse to cooperate in completing this Agreement, the County Supervisor will complete the form, sign it, and send it to me. The County Supervisor must send a letter with the completed form explaining that the Government will consider the form to be binding on me. I understand that if I violate the new agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

Who Are the Potential Purchasers of My Farm Products?

This is a list of purchasers who often buy farm products from me. I have included grain elevators, auction barns, and others who I expect might buy from me.

Farm Product	*Potential Purchasers*	*Business Address*

I understand that you realize that I do not always know in advance who will buy my product. If I cannot identify specific, potential purchasers, I have described below how the farm products will be sold. For example, if I sell farm products at a roadside stand, by advertising in the newspaper or to neighbors, the exact method of sale is described below.

Description and Method for Sale

Can I Sell to Purchasers Not Listed on this Form?

I understand that I may sell collateral to purchasers other than those listed on this form. If I do this, then I must immediately notify the County Supervisor of what has been sold and the name and business address of the purchaser. I do not need your prior approval.

Does FmHA's Name Have to be on the Check I Receive?

Both FmHA and my name must be listed on all checks, drafts, or money orders which I receive for the sale of collateral listed on this form unless all FmHA installments for the period of this Agreement have been paid; this includes all past-due installments.

Checks made in accordance with an assignment agreement do not have to include both names.

What Records Must I Keep?

I must keep records of how I actually dispose of collateral and how I use the proceeds. I must provide these records to the County Supervisor on request and at the end of the period covered by this Agreement.

Has FmHA Released its Security Interest?

You consent to all sales, exchanges, and other dispositions of collateral listed on this form, so long as I meet the terms of this Agreement. You agree to release your security interest as agreed above. You will provide a formal, written release on Form FmHA 462-12, "Statement of Continuation, Partial Release, Assignment, Etc.", or Form FmHA 460-1, "Partial Release", or other appropriate forms approved by your attorneys when I request it.

What Happens if I Violate This Agreement?

If I sell, exchange, or dispose of collateral and use the money in a way not listed in this Agreement without your permission, the Government's security interest in the collateral is not released. You will ask me to pay FmHA an amount equal to the value I received for the collateral involved. I understand that if I do not pay as requested by FmHA or do not provide enough information to allow the County Supervisor to approve the sale and use of proceeds, I have violated this loan agreement. I realize that you may request the purchaser of the collateral to pay FmHA or start legal procedures to sell all of my other collateral. I also understand that during the time covered by this Agreement, the County Supervisor can only approve one sale or use of proceeds which was made in violation of this Agreement.

I understand that if I do not pay as requested, FmHA may also refer the case for possible criminal action against me.

Who Can See This Agreement?

Unless you are required to do so by law or court order, you will not release this Agreement or information taken from it outside the United States Government to anyone other than me or my representative.

What Happens if My FmHA Loan Accounts are Accelerated?

I understand that your current regulations say that if I receive an Acceleration Notice from you, this Agreement automatically ends and that you will not afterwards release any proceeds from the disposition of collateral. However, by signing this form, I do not give up the right to challenge your regulations in court and may claim in court that I am entitled to the release of proceeds after acceleration.

This signature is to acknowledge that I(we) understand this Agreement and will keep to it.

Date: _____ _____

(Borrower)

Date: _____ _____

(County Supervisor)

BILLING CODE 3410-07-C

PART 1965—REAL PROPERTY

82. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

83. Section 1965.7 is amended by redesignating paragraphs (a) through (k) as (b) through (l), adding a new paragraph (a) and an introductory paragraph to read as follows:

§ 1965.7 Definitions.

As used in this subpart, the following definitions apply:

(a) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership, or joint operation is the borrower.

* * * * *

84. Section 1965.11 is amended by revising the introductory texts of paragraphs (b), and (c)(1)(ii), by revising paragraphs (c)(1)(i), (c)(2)(ii) and (c)(3) and removing paragraph (c)(2)(i)(C) to read as follows:

§ 1965.11 Preservation of security and protection of liens.

* * * * * *

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, actions will be taken by FmHA for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher in accordance with FmHA Instruction 2075–A (available in any FmHA office), and forwarded to the Finance Office for issuance of the Treasury Check and charged to the borrower's account. Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the State Director.

* * * * * *

(c) * * *

(1) * * *

(i) *County Supervisor's responsibility.* When the County Supervisor learns of a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower Attachment l of Exhibit A of Subpart S of Part 1951 of this chapter. Then the County Supervisor will send the County Office case file, complete with information concerning the action, and recommendations for FmHA servicing action to the State Director. The information sent to the State Director will include a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property. The State Director will also consult OGC about any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. Protective advances will only be authorized to protect the Government's interest. Protective advances will not be authorized for protection of the borrower's interest or the interest of any third party. When foreclosure or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or approving a subordination to permit another lender to make a loan, provided (protective advances will not be used in lieu of subsequent loans or subordinations unless authorized by the Assistant Administrator for Farmer Programs):

* * * * * *

(2) * * *

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower along with Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter and blank Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Then one of the following actions will be taken:

(A) *Making a bid.* Bidding will be completed in accordance with § 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid, actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with § 1955.18 (f) of Subpart A of Part 1955 of this chapter.

* * * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Attachments 1, 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * * *

85. Section 1965.12 is amended by revising paragraphs (a)(8), (b)(2)(ii)(B) and (g) to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing. extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

* * * * *

(a) * * *

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the present market value of the real estate security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized. If the farm tract secures only type(s) of FmHA loan(s) not currently authorized, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12 (a)(7) of this subpart.

* * * * *

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet installments when due. Reamortization of farmer program loans will be processed in accordance with Subpart S of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34 (f) of this subpart if an NP loan is involved.

86. Section 1965.13 is amended by revising the introductory paragraph and revising paragraph (f)(4)(ii) to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale. exchange or other disposition of a portion of or interest in security, except leases.

If an NP loan is involved, see § 1965.34 of this subpart or see Subpart S of Part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However, there is no authority for FmHA employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

* * * * *

(f) * * *

(4) * * *

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with Subpart A of Part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.57(b) of Subpart B of Part 1924 of this chapter.

* * * * *

87. Section 1965.17 is amended by revising paragraph (a) to read as follows:

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with § 1965.26(d) of this subpart.

* * * * *

88. Section 1965.25 is amended by revising the introductory texts of paragraphs (a) and (d) to read as follows:

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purpose of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security" unless it is a tract of land that is in addition to the farm real estate. Additional security for a SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and:

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with a SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a farmer program loan(s), provided the SFH security has been liquidated and there would be no proceeds in excess of the SFH debt to apply to the farmer program loan(s) This authority does not extend to valueless judgement liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

* * * * *

89. Section 1965.26 is amended by revising paragraphs (a)(2), (b)(1), (c), (d) and (f)(6), revising the introductory texts of paragraphs (b), (e) and (f), adding paragraph (g) and removing paragraph (b)(4) to read as follows:

§ 1965.26 Liquidation action.

(a) * * *

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file. If a qualified FmHA appraiser is not available, the State Director may contract for an appraisal in accordance with FmHA Instruction 2024.A (available in any FmHA office).

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be

accomplished as expeditiously as possible. In farmer program cases borrowers must receive Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* If the borrower fails to return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on the attachments that servicing is not requested, the County Supervisor should send Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan, and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the time the borrower is sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, except as provided in paragraph (c)(2) of this section.

(2) SFH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless it is subject to liquidation based on the provisions of § 1965.125 of Subpart C of this part, taking into full consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) The borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to Exhibit D of this subpart (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the provisions of Exhibit B (available in any FmHA Office) of Subpart S of Part 1951 of this Chapter when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled, as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the county office will remit collection under the Agreement, in the same manner as a SFH subsidy recapture receivable. In addition, thefollowing statement should be recorded in the body of Form FmHA 451–2, Schedule of Remittance": EQUITY RECEIVABLE PAYMENT.

(v) In some States FmHA is prohibited by State law from foreclosing the SFH loan when the nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled unless the conditions set forth in paragraph (c)(2) (i), (iii), and (iv) of this section are complied with.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not

to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with § 1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

* * * * *

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

* * * * *

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The County Supervisor will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with Subpart B of Part 1956 of this chapter.

(g) *Account balances.* When security property is sold for an amount not less than the market value or an assumption of an amount equal to the market value is approved, the account balance will be handled as follows:

(1) When the seller or transferor (and cosigner, if any) is not released from liability, the account balance after the assumption is processed, or cash proceeds are applied, will be settled according to Subpart B of Part 1956 of this chapter or reclassified to collection only.

(2) When the transferor will be released of liability Form FmHA 1965–8 "Release from Personal Liability" will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(3) In the case of a sale outside the program for less than debt, Form FmHA 1965–8 will be given to the borrower and otherwise distributed in accordance with The Forms Manual Insert.

90. Section 1965.27 is amended by removing paragraph (b)(4)(v) and redesignating paragraph (b)(4)(vi) as (b)(4)(v), revising the introductory text of the section and the introductory texts of paragraphs (b) and (b)(5), and revising paragraphs (b)(1), (b)(3), (b)(4)(iv), (b)(5)(iv), (c)(1)(iii), (g)(8) and (g)(9) to read as follows:

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access development or other rights is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27 (g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," Form FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," or Form FmHA 1965–15, "Assumption Agreement (Single Family Housing Loans)," for SFH Loans.

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under § 1965.26 (a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965–13 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest

owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under Subpart S of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) * * *

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursing at closing of the transfer.

* * * * *

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Form FmHA 460–9, will be executed by the assuming parties. The name, case number, and address, as applicable, will be changed to that of the transferees on the Finance Office records. In each of the following situations, Forms FmHA 465–5 and 460–9 must be prepared and distributed in accordance with the applicable FMI.

* * * * *

(iv) As immediate family member of an individual borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower. Also, an entity which is made up of only the individual borrower and the borrower's immediate family members may assume on the same terms the entire amount of a loan received by the individual borrower. Title to the real estate security would have to be transferred to the entity.

(c) * * *

(1) * * *

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) On eligible rates and terms by an immediate family member of an individual borrower; an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative; an entity which is made up of only immediate family members of an individual borrower; or an entity which is made up of only immediate family members of any partner(s), joint operator(s), stockholder(s) or member(s).

(B) On eligible rates and terms by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(g) * * *

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfer(s) will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965–13; 1965–22; 460–9 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment"; and 1965–8, will be prepared and distributed according to the FMI.

* * * * *

91. Section 1965.31 is amended by revising paragraph (a)(2) to read as follows:

§ 1965.31 Taking liens on real estate as additional security in servicing FmHA loans.

* * * * *

(a) * * *

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that ths taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

* * * * *

92. Exhibits A through D are added to Part 1965, Subpart A as follows:

Exhibits to Subpart A

Note: The exhibits referenced in this Subpart are available in any FmHA office.

Exhibit A—Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration.

Exhibit B—Notification of Prior Lienholders Intent to Foreclosure.

Exhibit C—Processing Guide.

Exhibit D—Equity Recapture Agreement.

Date: August 22, 1988.

Laverne Ausman,

Acting Under Secretary for Small Community and Rural Developemnt.

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